

United States
Circuit Court of Appeals
For the Ninth Circuit.

C. W. LUNG,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Southern District of California,
Southern Division.

FILED

FEB 18 1914

United States
Circuit Court of Appeals
For the Ninth Circuit.

C. W. LUNG,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Southern District of California,
Southern Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Assignment of Errors.....	145
Attorneys, Names and Addresses of.....	1
Bench Warrant	11
Bill of Exceptions.....	38
Bond to Appear.....	140
Certificate of Clerk U. S. District Court to Transcript of Record.....	157
Citation on Writ of Error (Original).....	4
Demurrer of Defendant C. W. Lung to Indict- ment	13
Indictment	6
Minutes of Trial—November 22, 1912.....	18
Minutes of Trial—November 26, 1912.....	24
Minutes of Trial—November 27, 1912.....	28
Motion for New Trial.....	33
Motion in Arrest of Judgment.....	34
Motion of Defendant C. W. Lung to Quash In- dictment	15
Names and Addresses of Attorneys.....	1
Order Denying Motion to Quash Indictment and Overruling Demurrer, etc.	17
Order Denying Motions in Arrest of Judgment and for New Trial and Sentence of Defend- ant Lung	36

Index.	Page
Order Enlarging Time to March 31, 1913, to File Record in Appellate Court.....	159
Order Enlarging Time to June 1, 1913, to File Record in Appellate Court.....	160
Order Enlarging Time to August 1, 1913, to File Record in Appellate Court.....	161
Order Enlarging Time to September 1, 1913, to File Record in Appellate Court.....	162
Order Extending Time to File Bill of Exceptions and Fixing Bail Pending Appeal.....	139
Order Settling and Allowing Bill of Exceptions.	138
Petition for Writ of Error.....	143
Plea of Defendant C. W. Lung, Copy.....	17
Praecipe for Transcript of Record.....	155
TESTIMONY ON BEHALF OF PLAINTIFF:	
BARNARD, A. G.....	128
BURGESS, FRED H.....	127
ESCALLIER, CHAS.	126
GILLMAN, MRS. MARY.....	130
Cross-examination	132
Redirect Examination	134
JONES, GUS P.....	129
MENDOZA, MARTIN	40
Cross-examination	68
Redirect Examination	86
Recross-examination	86
Re-redirect Examination	88
Recross-examination	91
Recalled—Cross-examination	120
Recalled	123

Index.

Page

TESTIMONY ON BEHALF OF PLAINTIFF.

MEYERS, JAMES F.....	124
NOEL, WILLIAM	92
Cross-examination by Mr. Andrews...	109
Cross-examination by Mr. McKeeby...	113
Recalled—Cross-examination	121
WALLING, HORACE A.....	125

TESTIMONY ON BEHALF OF DEFENDANT:

LUNG, C. W.....	137
Verdict	32
Writ of Error (Original).....	1

Names and Addresses of Attorneys.

For Plaintiff in Error:

Messrs. McKEEBY & REDD, Suite 616 California Building, Los Angeles, California.

For Defendants in Error:

A. I. McCORMICK, Esq., United States Attorney, Los Angeles, California.

EDWARD A. REGAN, Esq., Assistant United States Attorney, Los Angeles, California.

[4*]

[Writ of Error (Original).]

In the District Court of the United States of America, in and for the Southern District of California, Southern Division.

Case No. 464—CRIMINAL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. W. LUNG et al.,

Defendants.

United States of America,—ss.

The President of the United States of America to the Honorable Judge of the District Court of the United States for the Southern District of California, Southern Division.

Because in the record and proceedings and also in the rendition of the verdict and of the judgment of

*Page-number appearing at foot of page of original certified Record.

a plea which is in the said District Court before you, between C. W. Lung, plaintiff in error and the United States of America, defendant in error, manifest errors have happened to the great damage of the said C. W. Lung, plaintiff in error, as by his complaint appears.

We being willing that error, if any have happened, should be duly corrected and just and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Writ so that you have the same at the City of San Francisco, in the State of California on Wednesday, the 26th day of February, 1913, next in the said Circuit Court of Appeals to be then and there held that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein, to correct that error what of right and according to the law and custom of the [5] *of the* United States, should be done.

WITNESSETH: The Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 28th day of January, in the year of our Lord Nineteen Hundred and Thirteen, and of the Independence of the United States, the One

Hundred and Thirty-seventh.

[Seal] WM. M. VAN DYKE,
Clerk of the District Court of the United States, for
the Southern District of California,

By C. E. Scott,
Deputy Clerk.

The above Writ of Error is hereby allowed.

OLIN WELLBORN,
United States District Judge. [6]

I hereby certify that a copy of the within Writ of Error was on the 28th day of January, 1913, lodged in the Clerk's Office of the said United States District Court for the Southern District of California, for the said defendant in error.

WM. M. VAN DYKE,
Clerk U. S. District Court, Southern District of
California.

By C. E. Scott,
Deputy Clerk.

Received copy of the within this 28 day of Jan.,
1913.

A. I. McCORMICK,
EDWARD A. REGAN,
Attorneys for Pltff. [7]

[Endorsed]: Original. No. 464-Crim. In the United States District Court in and for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. C. W. Lung et al., Defendant. Writ of Error. Filed January 28, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

In the District Court of the United States of America, in and for the Southern District of California, Southern Division.

Case No. 464—CRIM.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.

C. W. LUNG et al.,
Defendants.

Citation [on Writ of Error (Original)].

United States of America,—ss.

To the United States of America and A. I. McCormick, United States District Attorney, Southern District of California, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, State of California, on the 26th day of February, 1913, pursuant to a Writ of Error on file in the Clerk's office of the District Court of the United States in and for the Southern District of California, Southern Division, in that certain action wherein the United States of America, Plaintiff and C. W. Lung et al., defendants in error, to show cause, if any there be, why the judgment given, made and entered against the defendant C. W. Lung in said Writ of Error mentioned, should not be corrected and speedy justice should not be done to the parties, defendant in that behalf.

WITNESS, the Honorable OLIN WELLBORN, United States District Judge for the Southern District of California, Southern Division, this 28th day of January, 1913, and the Independence of the United States the One Hundred and Thirty-seventh.

OLIN WELLBORN,
United States District Judge, Southern District of California. [8]

Received copy of the within citation this 28 day of Jan., 1913.

A. I. McCORMICK,
EDWARD A. REGAN,
Attorneys for Pltff. [9]

[Endorsed]: Original. No. 464—Crim. In the United States District Court in and for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. C. W. Lung et al., Defendant. Citation. Filed January 28, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

In the District Court of the United States of America, in and for the Southern District of California, Southern Division.

No. 464—CRIM.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

C. W. LUNG, MARTIN MENDOZA, MANUEL
MENDOZA, L. W. NOEL, ME HONG, JOA-
QUIN NAND, and ARTHUR DALY,
Defendants. [10]

[Indictment.]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

At a stated term of said Court, begun and holden at the City of Los Angeles, County of Los Angeles, within and for the Southern Division of the Southern District of California, on the second Monday of January, in the year of our Lord, one thousand nine hundred and twelve,—

The Grand Jurors of the United States of America, chosen, selected and sworn, within and for the Division and District aforesaid, on their oath present:

That C. W. Loung, Manuel Mendoza, Martin Mendoza, L. W. Noel, Me Hong, Joaquin Nand and Arthur Daly, whose full and true names are, and each of them is, other than as herein stated, to the Grand Jurors unknown, being evil-minded persons, heretofore, to wit, on or about the first day of October, in the year of our Lord one thousand nine hundred and eleven, at and within the Southern Division of the Southern District of California, and within the jurisdiction of this Honorable Court, did knowingly, willfully, wickedly, unlawfully, corruptly and feloniously conspire, combine, confederate and agree together and with divers other persons, whose names are to the said Grand Jurors unknown, to commit an offense against the United States, that is to say:

They, the said C. W. Loung, Manuel Mendoza, Martin Mendoza, L. W. Noel, Me Hong, Joaquin

Nand and Arthur Daly, did, at the time and place aforesaid, [11] knowingly, wilfully, wickedly, unlawfully, corruptly and feloniously, conspire, combine, confederate and agree together and with said divers other persons whose names are, as aforesaid to the Grand Jurors unknown, to wilfully, unlawfully and knowingly bring into, and cause to be brought into, and to aid and abet the bringing into, the United States, by land, at divers points and places in the Southern Division of the Southern District of California (the names of which said points and places are to the Grand Jurors unknown), from divers points and places in the Republic of Mexico, to wit, the town of Tia Juana and other points and places in said Republic of Mexico (the names of which other places are to the Grand Jurors unknown), certain Chinese persons (whose names are to the Grand Jurors unknown), to wit, any and all Chinese persons who were then, and those who would thereafter be in said Republic of Mexico, desiring and intending to enter the United States, and which said Chinese persons, as they, the said C. W. Loung, Manuel Mendoza, Martin Mendoza, L. W. Noel, Me Hong, Joaquin Nand and Arthur Daly, and said divers other persons (whose names are to the Grand Jurors unknown), then and there well knew, were not, nor would they be, nor was either or any of them, then and there, nor would they be at any time thereafter, or at all, entitled, permitted or allowed by the laws of the United States, to enter or remain in the United States, and each of which said Chinese persons, as they, the said C. W. Loung, Manuel

Mendoza, Martin Mendoza, L. W. Noel, Me Hong, Joaquin Nand and Arthur Daly, and said divers other persons (whose names are to the Grand [12] Jurors unknown), then and there well knew, was, and at all times in this indictment mentioned and referred to, would be a Chinese laborer and a native of China and a person of Chinese descent, and would not have, and would not be entitled to have, a certificate entitling him to enter, be or remain in the United States.

That said conspiracy, combination, confederation and agreement, between the said C. W. Loung, Manuel Mendoza, Martin Mendoza, L. W. Noel, Me Hong, Joaquin Nand and Arthur Daly, and the said divers other persons (whose names are, as aforesaid, to the Grand Jurors unknown), was, throughout all of the time from and after said first day of October, 1911, and at all times in this indictment mentioned and referred to, and particularly at the time of the commission of each and all of the overt acts in this indictment hereinafter set forth, continuously in existence and process of execution.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That in pursuance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said Martin Mendoza, on or about the 12th day of December, in the year of our Lord one thousand nine hundred and eleven, did leave and depart from the City of San Diego, County of San Diego, within the Southern Division of the Southern District of California, and

go to, and did receive from the said Me Hong and take charge of and control, at or near the international boundary line between the United States and the said Republic of Mexico, near the town of Tia [13] Juana in Lower California, Mexico, one Chin Sing, a Chinese laborer, a native of China and a person of Chinese descent, whose full and true name other than as herein stated, is to the Grand Jurors unknown, and which said Chin Sing did not have a certificate entitling him to enter, be or remain in the United States, and the said Martin Mendoza, did convey and attempt to convey the said Chin Sing from said international boundary line into and through the said County of San Diego in the State, Division and District aforesaid, to the City of Los Angeles, County of Los Angeles, State, Division and District aforesaid.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present:

That in furtherance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said L. W. Noel, on or about the 12th day of December, in the year of our Lord one thousand nine hundred and eleven, did leave and depart from the said City of San Diego, State, Division and District aforesaid, and go to Otay, in the said County of San Diego, for the purpose and with the intention of conveying and assisting in conveying, and attempting to convey, the said Chin Sing from the said international boundary line to the said City of Los Angeles, the said L. W. Noel then and there well knowing the

said Chin Sing to have been smuggled and unlawfully [14] and clandestinely brought into the United States from Mexico, as aforesaid, in pursuance and execution of said unlawful conspiracy, combination, confederation and agreement.

Contrary to the form of the statutes of the United States in such case made and provided, and against the peace and dignity of the said United States.

A. I. McCORMICK,

United States Attorney.

[Endorsed]: Form No. 456. No. 464—Crim. United States District Court, Southern District of California, Southern Division. The United States of America vs. C. W. Loung, Manuel Mendoza, Martin Mendoza, L. W. Noel, Me Hong, Joaquin Nand and Arthur Daly. Indictment for Violation of Section 37, Federal Penal Code of 1910. Conspiracy to Smuggle Chinese Laborers. A True Bill. E. B. Tufts, Foreman. Presented and filed in open court, this 8th day of March, A. D. 1912. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. 7-703. ———, United States Attorney.

Names of witnesses examined before the said Grand Jury on finding the foregoing indictment:

Bail. C. W. Loung, \$1000. Bail Manuel Mendoza, 1000. Bail Martin Mendoza, 1000. Bail L. W. Noel, 1000. Me Hong, 2500. Joaquin Nand, 2500. Arthur Daly, 2500. [15]

[Bench Warrant.]**UNITED STATES OF AMERICA.**

Southern District of California,—ss.

To the Marshal of the United States of America,
for the Southern District of California, and his
Deputies, or any or either of them, Greeting:

WHEREAS, at a District Court of the United
States of America, for the Southern District
[Seal] of California, begun and held at the City and
County of Los Angeles, within and for the
District aforesaid, on the 8th day of March, in the year
of our Lord one thousand nine hundred and Twelve
the Grand Jurors in and for the said District,
brought into the said Court a true BILL OF IN-
DICTMENT against C. W. Loung, Manuel Men-
doza, Martin Mendoza, Me Hong, Joaquin Nand and
Arthur Daly,, for Violation of Sec. 37, Fed-
eral Penal Code of 1910 (Conspiracy to smuggle Chin-
ese laborers), as by the same Indictment,
now remaining on file and of record in said Court,
will more fully appear; to which Indictment the said
above-named defendants have not yet appeared
or pleaded;

NOW THEREFORE, You are hereby com-
manded, in the name of the PRESIDENT OF THE
UNITED STATES OF AMERICA, to apprehend the
said above-named defendants . . . and . . each of them
..bring before the said Court, at the United States
District Courtroom, in the City and County of Los
Angeles, to answer the Indictment aforesaid. [16]

WITNESS The Honorable OLIN WELLBORN,
Judge of the said District Court, and the Seal there-
of, at the City and County of Los Angeles the....
9th.... day of.... March...., A. D. 1912.

Attest: WM. M. VAN DYKE,
Clerk.

By E. H. Owen,
Deputy Clerk.

A. I. McCORMICK,
U. S. Attorney.

MARSHAL'S OFFICE.

United States Of America,
Southern District of California:

In obedience to the Warrant I have the bod.. of
the said C. W. Leung 3/23 Arthur Daly be-
fore the Honorable the District Court of the United
States, in and for the Southern District of Cali-
fornia, this 21 day of Meh.... A. D. 1912..

LEO V. YOUNG WORTH,
U. S. Marshal.
By J. F. Durlin,
Deputy U. S. Marshal.

[Endorsed]: Marshal's Criminal Docket No. 4458.
No. 464. United States District Court, Southern
District of California, Southern Division. The
United States of America vs. C. W. Loung, Manuel
Mendoza, Martin Mendoza, Me Hong, Joaquin Nand
and Arthur Daly. Bench Warrant. Bail. Defts.
Loung, Manuel Mendoza, Martin Mendoza fixed at
\$1000 Each and Defts. Hong, Nand & Daly \$2500
Each. A. I. McCormick, U. S. Attorney. Filed

March 26th, 1912. Wm. M. Van Dyke, Clerk. By
Virgil W. Owen, Deputy Clerk. [17]

*In the United States District Court in and for the
Southern District of California, Southern Di-
vision.*

No. 464—CRIMINAL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. W. LUNG, MARTIN MENDOZA, MANUEL
MENDOZA, L. W. NOEL, ME HONG,
JOAQUIN NAND and ARTHUR DALY,
Defendants.

**Demurrer [of Defendant C. W. Lung to Indict-
ment].**

Comes now the defendant C. W. Lung and demurs
to the indictment herein upon the following grounds,
to wit:

I.

That said indictment does not state facts sufficient
to constitute a public offense against the laws of the
United States.

II.

That said indictment is uncertain in this:

(a) That it cannot be ascertained therefrom
when said alleged conspiracy was formed with suffi-
cient certainty as to time so as to enable the defend-
ant to properly prepare and present his defense.

(b) That it cannot be ascertained therefrom
where said alleged conspiracy was formed with suffi-

cient certainty to enable defendant to prepare properly and present his defense.

(c) That it cannot be ascertained therefrom whether the alleged overt act of defendant Martain Mendoza or whether the alleged overt act of defendant L. W. Noel were one and the same act or were separate and distinct acts of the said alleged conspiracy.

(d) That it cannot be ascertained therefrom whether [18] said alleged overt acts were committed at or near the town of Tia Juana in lower California or whether said acts were committed at Otay in the County of San Diego.

III.

That the said indictment is unintelligible for the same reasons and in the same particulars that it is uncertain.

IV.

That the said indictment is ambiguous for the same reasons and in the same particulars that it is uncertain.

V.

That no evidence was taken before the Grand Jury upon which to base said indictment.

WHEREFORE, defendant prays that said indictment be dismissed and said defendant discharged.

McKEEBY & REDD,

Attorneys for Defendant.

[Endorsed]: Original. No. 464—Criminal. In the United States District Court in and for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. C. W. Lung,

Martin Mendoza, Manuel Mendoza, L. W. Noel, Me Hong, Joaquin Nand and Arthur Daly, Defendants. Demurrer. Filed April 1, 1912. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. Received copy of the within this 1st day of April, 1912. A. I. McCormick, Attorney for Pltff. McKeeby & Redd, Suite 616 California Building. Telephones: Main 2389, Home F 1596, Los Angeles, Cal., Attorneys for Defendant. [19]

[Motion of Defendant C. W. Lung to Quash Indictment.]

In the United States District Court in and for the Southern District of California, Southern Division.

No. 464—CRIMINAL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. W. LUNG, MARTIN MENDOZA, MANUEL MENDOZA, L. W. NOEL, ME HONG, JOAQUIN NAND and ARTHUR DALY,
Defendants.

Comes now the defendant C. W. Lung and moves the Court to quash the indictment in the above-entitled case upon the following grounds:

I.

Said indictment does not state facts sufficient to constitute a public offense against the laws of the United States.

II.

No evidence was introduced before the Grand Jury upon which to base said indictment.

III.

Said indictment is fatally defective in this; that the names of the witnesses, if any, examined before the Grand Jury have not been indorsed upon said indictment.

WHEREFORE, defendant prays that said indictment be quashed and that he be discharged.

McKEEBY & REDD,
Attorneys for Defendants.

[Endorsed]: Original. No. 464—Criminal. In the United States District Court in and for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. C. W. Lung, Martin Mendoza, Manuel Mendoza, L. W. Noel, Me Hong, Joaquin Nand and Arthur Daly, Defendants. Motion to Quash. Filed April 1, 1912. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. Received copy of the within this 1st day of April 1912. A. I. McCormick, Attorney for Pltff. [20] McKeeby & Redd, Suite 616 California Building. Telephones: Main 2389, Home F. 1596, Los Angeles, Cal., Attorneys for Defendants. [21]

**[Order Denying Motion to Quash Indictment and
Overruling Demurrer, etc.]**

At a stated term, to wit, the January Term, A. D. 1912, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the City of Los Angeles, on Monday, the 22d day of April, in the year of our Lord one thousand nine hundred and twelve. Present: The Honorable OLIN WELLBORN, District Judge.

No. 464—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

C. W. LUNG et al.,

Defendants.

Copy Plea of Deft. C. W. Lung.

This cause coming on this day to be heard on the motion of defendant C. W. Lung to quash the indictment, and on said defendant's demurrer to said indictment; Edward A. Regan, Esq., appearing as counsel for the United States; Geo. L. McKeeby, Esq., appearing as counsel for defendant Lung; and said defendant Lung being present in court; and said motion to quash the indictment and also said demurrer to the indictment having been submitted to the Court for its consideration and decision; it is now by the Court ordered that said motion of defendant Lung to quash the indictment be, and the same here-

by is denied, and it is further ordered that said demurrer of defendant Lung be, and the same hereby is overruled; and defendant C. W. Lung being thereupon required to plead to said indictment, and having plead not guilty as charged therein, which plea is now by order of the court hereby entered herein; it is ordered that said cause be, and the same hereby is continued for the setting of the same down for trial.

[22]

[Minutes of Trial—November 22, 1912.]

COPY MINUTES OF TRIAL.

At a stated term, to wit, the July Term, A. D. 1912, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Friday, the 22d day of November, in the year of our Lord one thousand nine hundred and twelve. Present: The Honorable FRANK H. RUDKIN, District Judge.

No. 464—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

C. W. LUNG et al.,

Defendants.

This cause coming on this day for the trial of defendants C. W. Lung and Arthur Daly before the Court and a jury to be impanelled; Edward A. Regan, Esq., Assistant U. S. Attorney, appearing as

counsel for the United States; defendant C. W. Lung being present on bail, with his counsel Geo. L. McKeeby, Esq., and John B. Redd, Esq.; defendant Arthur Daly being present in custody of the U. S. Marshal, with his counsel, Willedd Andrews, Esq.; and E. Williams having been sworn as shorthand reporter of the testimony and proceedings, and the Court having ordered that the trial proceed, and that a jury be impanelled herein; and the following twelve (12) jurors having been duly drawn, called and sworn on *voir dire*, to wit: W. S. Marshall, Louis Amati, John A. Blumve, James J. McInerney, A. J. Bartlett, O. A. Vickery, John H. Flynn, George F. Mansfield, Nathan P. Bailey, James L. Griffin, W. F. Ball and L. R. Miner; and said jurors having been examined on behalf of the United States by Edward A. Regan, Esq., Assistant U. S. Attorney, of counsel for the United States, and having been examined on behalf of said defendants by Geo. L. McKeeby, Esq., of counsel for defendant C. W. Lung; and John A. Blumve having been challenged for cause by defendants, [23] which challenge is allowed by the Court and the juror excused; and G. L. Davidson, a term trial juror, having been duly drawn, called, sworn on *voir dire* and examined by counsel for the United States and by counsel for defendants; and Nathan P. Bailey having been challenged for cause by the United States, which challenge is allowed by the Court and the juror excused; and Geo. W. Grimes, a term trial juror, having been duly drawn, called, sworn on *voir dire* and examined by counsel for the United States and for the defendants; and O.

A. Vickery having been challenged for cause by defendants, which challenge is allowed by the Court and the juror excused; and S. C. Dodge, a term trial juror, having been duly drawn, called, sworn on *voir dire* and examined by counsel for the United States and for defendants; and L. R. Miner having been challenged for cause by defendants, which challenge is allowed by the Court and the juror excused; and Wm. H. Rorick, a term trial juror, having been duly drawn, called, sworn on *voir dire* and examined by counsel for the United States and for defendants; and the jurors now in the box having been passed for cause by counsel for both sides; and A. J. Bartlett having been challenged peremptorily by the United States and excused; and John D. Mercer, a term trial juror, having been duly drawn, called, sworn on *voir dire*, examined by counsel for the United States and for defendants and passed for cause; and said John D. Mercer having thereupon been challenged peremptorily by defendants and excused; and James W. Johnson, a term trial juror, having been duly drawn, called, sworn on *voir dire*, examined by counsel for the United States and for defendants and passed for cause and said James W. Johnson having thereupon been challenged peremptorily by defendants and excused; and M. C. Marsh, a term trial juror, having been duly drawn, called, sworn on *voir dire*, examined by counsel for the United States and for defendants and passed for cause; and George F. Mansfield, having thereupon been challenged peremptorily by defendants and [24] excused; and Wm. F. Jantzen, a term trial

juror, having been duly drawn, called, sworn on *voir dire*, examined by counsel for the United States and for defendants and passed for cause; and said Wm. F. Jantzen having thereupon been challenged peremptorily by the United States and excused; and C. Milton Adams, a term trial juror, having been duly drawn, called, sworn on *voir dire*, examined by counsel for the United States and for defendants and passed for cause; and Louis Amati having been challenged peremptorily by defendants and excused; and Chas. W. Sanger, a term trial juror, having been duly drawn, called, sworn on *voir dire*, examined by counsel for the United States and for defendants and passed for cause, and said Chas. W. Sanger having thereupon been challenged peremptorily by the United States and excused; and Albert R. Maines, a term trial juror, having been duly drawn, called, sworn on *voir dire*, examined by counsel for the United States and for defendants and passed for cause; and Geo. W. Grimes having been challenged peremptorily by defendants and excused; and Clifford B. Deyeo, a term trial juror, having been duly drawn, called, sworn on *voir dire* and examined by counsel for the United States and for defendants and passed for cause; and said Clifford B. Deyeo having thereupon been challenged peremptorily by defendants and excused; and Jesse V. Neville, a term trial juror, having been duly drawn, called, sworn on *voir dire* and examined by counsel for the United States and for defendants, and said Jesse V. Neville, having thereupon been challenged for cause by the United States, which challenge is allowed by the

Court and the juror excused; and Geo. H. Freeman, a term trial juror, having been duly drawn, called, sworn on *voir dire* and examined by counsel for the United States and for defendants and passed for cause; and said Geo. H. Freeman having thereupon been challenged peremptorily by the United States [25] and excused; and John V. Mills, a term trial juror, having been duly drawn, called, sworn on *voir dire*, examined by counsel for the United States and for defendants and passed for cause; and the twelve (12) jurors now in the box having been accepted by counsel for both sides as the jury to try this cause, and having been duly sworn as the jury to try said cause, said jury as so impanelled and sworn being the following named, to wit:

JURY:

- | | |
|------------------------|-----------------------|
| 1. W. S. Marshall, | 7. John H. Flynn, |
| 2. Albert R. Maines, | 8. C. Milton Adams, |
| 3. G. L. Davidson, | 9. John V. Mills, |
| 4. James J. McInerney, | 10. James L. Griffin, |
| 5. M. C. Marsh, | 11. W. F. Ball, |
| 6. S. C. Dodge, | 12. Wm. H. Rorick; |

—and the Court having admonished the jury not to talk with anyone else or permit anyone else to talk to them about this case or anything connected with it during the progress of this trial, and not to talk with each other about this case or anything connected with it until the same is finally given them for consideration under the instructions of the Court; it is thereupon, at the hour of 12:45 o'clock P. M., ordered that said cause be, and the same hereby is, continued until the hour of 2:30 o'clock P. M. of

this day for further trial. Defendant Arthur Daly is remanded to the custody of the U. S. Marshal.

(At 2:30 P. M.)

No. 464—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

C. W. LUNG et al.,

Defendants.

This cause coming on at this time for the further trial of defendants C. W. Lung and Arthur Daly before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., [26] Assistant U. S. Attorney, appearing as counsel for the United States; defendant C. W. Lung being present on bail, with his counsel, Geo. L. McKeeby, Esq., and John B. Redd, Esq.; defendant Arthur Daly being present in custody of the U. S. Marshal, with his counsel, Willedd Andrews, Esq.; E. Williams being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being present; and the indictment having been read to the jury and the pleas of not guilty of said defendants stated to the jury by the Clerk; and Edward A. Regan, Esq., Assistant U. S. Attorney of counsel for the United States, having made a statement of what the Government expects to prove; and, on motion of Willedd Andrews, Esq., of counsel for defendant Arthur Daly, the rule as to witnesses having been invoked, it is ordered that all witnesses herein, except Inspector O. F.

Miller be excluded from the courtroom except when they are upon the witness-stand to give their testimony; and Martin Mendoza having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the United States having offered the following exhibits, which are admitted in evidence on behalf of the Government, to wit: U. S. Ex. 1, Revolver; U. S. Ex. 2, Revolver, holster and belt; U. S. Ex. 3, card; and U. S. Ex. 4, Receipt for \$300.00; and L. W. Noel having been called and sworn as a witness on behalf of the United States, and having given his testimony; and the Court having given the jury the usual admonition; it is now, at the hour of 5 o'clock P. M., ordered that said cause be, and the same hereby is, continued until Tuesday, the 26th day of November, 1912, at 10:30 o'clock A. M., for further trial. [27]

[Minutes of Trial—November 26, 1912.]

At a stated term, to wit, the July Term, A. D. 1912, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the City of Los Angeles, on Tuesday, the 26th day of November, in the year of our Lord one thousand nine hundred and twelve. Present: The Honorable FRANK H. RUDKIN, District Judge.

No. 464—CRIM. S. D. .

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

C. W. LUNG et al.,

Defendants.

This cause coming on this day for the further trial of defendants C. W. Lung and Arthur Daly before the court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendant C. W. Lung being present on bail, with his counsel, Geo. L. McKeeby, Esq., and John B. Redd, Esq.; defendant Arthur Daly being present in custody of the U. S. Marshal, with his counsel, Willedd Andrews, Esq.; and E. Williams being present as shorthand reporter of the testimony and proceedings, and counsel having stipulated that the jury are present and that the roll of the jury need not be called; and the jury being present in court; and Martin Mendoza, a witness on behalf of the United States, having been recalled for further cross-examination, and having given his testimony; and L. W. Noel, a witness on behalf of the United States, having been recalled for further cross-examination, and having given his testimony; and James F. Meyers, Horace A. Walling, Chas. Escallier, Fred H. Burgess, and A. G. Bernard having respectively been called and sworn as witnesses on behalf of the United States, and having given their testimony; and, in connection with said testimony, [28] the

United States having offered two tickets, Los Angeles to San Diego and return, which are admitted in evidence on behalf of the United States as U. S. Ex. 5 and U. S. Ex. 6, respectively; and Emile Christopher and Gus T. Jones having respectively been called and sworn as witnesses on behalf of the United States and having given their testimony; and Martin Mendoza, a witness on behalf of the United States, having been recalled for further examination, and having given his testimony; and Mary E. Hammel having been called and sworn as a witness on behalf of the United States, and having given her testimony; and the jury, at the hour of 11:45 o'clock, A. M., having been excused, after the usual admonition by the Court, until the hour of 2 o'clock, P. M., of this day; and Geo. L. McKeeby, Esq., of counsel for defendant C. W. Lung, having moved that the Court instructed the jury to acquit the defendants now on trial, and having argued his said motion in support thereof; and Court, at the hour of 12 o'clock, M., having taken a recess until the hour of 2 o'clock, P. M., of this day;

And now, at the hour of 2 o'clock, P. M., Court having reconvened; and counsel and defendants being present as before; and Nellie B. Scott having been sworn as shorthand reporter of the testimony and proceedings; and counsel having stipulated that the jury are present, and that the roll of the jury need not be called; and the jury all being present in court; and Mrs. Gilman having been called and sworn as a witness on behalf of the United States, and having given her testimony; and the Court hav-

ing ordered that defendants' motion that the Court instruct the jury to acquit the defendants now on trial be, and the same hereby is granted as to defendant Arthur Daly, and that the jury are instructed to acquit said defendant Arthur Daly, but that said motion to instruct the jury to acquit be, and the same hereby is denied as to the defendant C. W. Lung; [29] and the Government having rested; and Dora Smith and Jesse F. Booth having respectively been called and sworn as witnesses on behalf of defendants, and having given their testimony; and court, at the hour of 2:45 o'clock, P. M., having taken a recess for 10 minutes; and now, at the hour of 2:55 o'clock, P. M., court having reconvened, and counsel, shorthand reporter and defendant being present as before; and counsel having stipulated that the jury are present and that the roll of the jury need not be called; and the jury being present in court; and S. W. Lung, one of the defendants, having been called and sworn as a witness in his own behalf, and having given his testimony; and, in connection with the testimony of said witness, the United States having offered for identification the following exhibits, which are for identification marked as follows, to wit: U. S. Ex. 7a, letter in Chinese; U. S. Ex. 7b, envelope; U. S. Ex. 8, letter in Chinese; U. S. Ex. 9, letter in Chinese; U. S. Ex. 10a, letter in Chinese; U. S. Ex. 10b, envelope; U. S. Ex. 11a, letter in Chinese; U. S. Ex. 11b, envelope; U. S. Ex. 12a, letter in Chinese; U. S. Ex. 12b, envelope; U. S. Ex. 13, Chinese map; U. S. Ex. 14, letter of Sept. 16, 1911; U. S. Ex. 15a, letter in

Chinese; U. S. Ex. 15b, envelope; U. S. Ex. 16a, letter in Chinese; and U. S. Ex. 16b, envelope; and defendants having rested; and O. F. Miller, Cassius L. Keat and Chan Kiu Sing having respectively been called and sworn as witnesses on behalf of the United States in rebuttal, and having given their testimony; it is ordered that said cause be, and the same hereby is dismissed as to defendant Arthur Daly, and that said defendant be, and he hereby is discharged from custody; and the Court having given the jury the usual admonition, it is, at the hour of 4 o'clock, P. M., ordered that said cause be, and the same hereby is continued until Wednesday, the 27th day of November, 1912, at 10:30 o'clock, A. M.

[30]

[Minutes of Trial—November 27, 1912.]

At a stated term, to wit, the July Term, A. D. 1912, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the City of Los Angeles, on Wednesday, the 27th day of November, in the year of our Lord one thousand nine hundred and twelve. Present: The Honorable FRANK H. RUDKIN, District Judge.

No. 464—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

C. W. LUNG et al.,

Defendants.

This cause coming on this day for the further trial of defendant C. W. Lung before the Court and a jury heretofore duly impanelled herein; no counsel appearing on behalf of the United States; defendant C. W. Lung being present on bail, with his counsel, Geo. L. McKeeby, Esq., and John B. Redd, Esq.; and thereafter Edward A. Regan, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; E. Williams being present as shorthand reporter of the testimony and proceedings; and counsel for both sides having stipulated that the jury are present and having waived the call of the roll of said jury, and the jury all being present; and the Court having sustained the objection heretofore made to certain exhibits offered by the United States; and the Government having rested; and defendant having rested; and said cause having been argued to the jury by Edward A. Regan, Esq., Assistant U. S. Attorney of counsel for the United States; and Geo. L. McKeeby, Esq., of counsel for defendant Lung having been excused from the courtroom for a moment; and thereafter said Geo. L. McKeeby having come into court; and said cause having been argued to the jury by Geo. L. McKeeby, Esq., of counsel for defendant Lung; and [31] said cause having also been argued to the jury in reply by Edward A. Regan, Esq., Assistant U. S. Attorney, of counsel for the United States; and the argument being closed; and the Court having given the jury its oral instructions; and all instructions requested by the parties having been refused, except in so far as the same may be embodied in the oral

instructions given by the Court; and the Court having ordered that exceptions be, and they hereby are noted herein on behalf of defendant Lung to each and every of the instructions given by the Court, and to the refusal of the Court to give each and every of the instructions requested by said defendant and refused by the Court; and the jury, at the hour of 12:04 o'clock, P. M., having retired to consider their verdict; thereafter it is by the Court ordered that said jury be conducted by the U. S. Marshal to some suitable place for their midday meal, said midday meal for jurors and the officers accompanying them to be at the expense of the United States, and that, after said midday meal, the U. S. marshal conduct said jury to their room for further deliberation.

(At 2:45 P. M.)

No. 464—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

C. W. LUNG et al.,

Defendants.

Now, at the hour of 2:45 o'clock, P. M., the jury in this cause having come into court; Edward A. Regan, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendant C. W. Lung being present on bail, with his counsel, John B. Redd, Esq., and the shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and the jurors having been asked if they have agreed upon a ver-

dict, and having by their foreman replied that they have so agreed, and having been required to state their verdict, [32] and their verdict having been read by the foreman; now, by direction of the Court, said verdict is filed and recorded by the clerk, said verdict being as follows, and the following being the record thereof, to wit:

*In the District Court of the United States, for the
Southern District of California, Southern Di-
vision.*

No. 464—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

C. W. LUNG, ARTHUR DALY, et al.,

Defendants.

We, the jury in the above-entitled cause, find the defendant C. W. Lung guilty as charged in the indictment.

Los Angeles, Cal., November 27th, 1912.

M. C. MARSH,

Foreman.

And said verdict having been read to the jury as so recorded, and the jurors having said that it is their verdict, the jurors herein are now directed to remain in court for impanellment in another case, whereupon, on motion of Edward A. Regan, Esq., Assistant U. S. Attorney, it is ordered that the bail of defendant C. W. Lung, pending sentence be, and the same hereby is fixed at \$2,500.00, and said defendant is committed to the custody of the U. S.

Marshal until said bail is given; and it is further ordered, on motion of John B. Redd, Esq., of counsel for the United States, that this cause be, and the same hereby is continued until Monday, the 9th day of December, 1912, at 10:30 o'clock, A. M., for the sentence of said defendant C. W. Lung. [33]

[Verdict.]

*In the District Court of the United States, for the
Southern District of California, Southern Di-
vision.*

No. 464—CRIM. S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

C. W. LUNG, ARTHUR DALY, et al.,
Defendants.

We, the jury in the above-entitled cause, find the defendant C. W. Lung guilty as charged in the indictment.

Los Angeles, Cal., November 27th, 1912.

M. C. MARSH,
Foreman.

[Endorsed]: 464—Crim. U. S. District Court,
Southern Dist. of Calif., So. Div. United States vs.
C. W. Lung et al. Verdict. Filed November 27,
1912. Wm. M. Van Dyke, Clerk. By C. E. Scott,
Deputy Clerk. [34]

*In the District Court of the United States in and
for the Southern District of California, South-
ern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. W. LUNG,

Defendant.

Motion for New Trial.

Comes now the defendant C. W. Lung and moves the Court to set aside the verdict theretofore on the 27th day of November, 1912, rendered herein, and for a new trial in this case on the following ground:

I.

That the Court misdirected the jury in matters of law.

II.

That the Court erred in decisions of questions of law arising during the course of the trial.

III.

That the verdict is contrary to law.

IV.

That the verdict is contrary to the evidence.

V.

That the verdict is contrary to law and the evidence.

VI.

That the evidence is insufficient to justify the verdict.

VII.

This motion will be made upon the files, records and papers in the case and the testimony taken at the trial thereof.

McKEEBY & REDD,
Attorneys for Defendant.

[Endorsed]: No. 464. In the United States District Court in and for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. C. W. Lung, Defendant. Motion for New Trial. Filed Dec. 9, 1912. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. Received copy of the within this 9 day of Dec., 1912. A. I. McCormick, Edward A. Regan, Attorneys for Pltff. McKeeby & Redd, Suite 616 California Building. Telephones: Main 2389, Home F 1596, Los Angeles, Cal., Attorneys for Defendant.
[35]

*In the District Court of the United States in and for
the Southern District of California, Southern
Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. W. LUNG,

Defendant.

Motion in Arrest of Judgment.

Comes now the defendant, C. W. Lung, in the above-entitled action and moves the Court to arrest

the judgment in this case for the following reasons, to wit:

I.

That the facts stated in the indictment in the said case do not constitute a public offense against the United States or the laws thereof.

II.

That the facts stated in said indictment do not constitute a violation of any statute of the United States.

III.

Said motion will be made upon the indictment papers, files and proceedings herein.

WHEREFORE, for the reasons apparent in the record the defendant prays that said judgment be arrested.

McKEEBY & REDD,
Attorneys for Defendant.

[Endorsed]: Original. No. 464. In the United States District Court in and for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. C. W. Lung, Defendant. Motion in Arrest of Judgment. Filed Dec. 9, 1912. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. Received copy of the within this 9 day of Dec., 1912. A. I. McCormick, Edward A. Regan, Attorneys for Pltff. McKeeby & Redd, Suite 616 California Building. Telephones: Main 2389, Home F 1596, Los Angeles, Cal., Attorneys for Defendant.
[36]

**Order Denying Motions in Arrest of Judgment and
for New Trial, and Sentence of Deft. Lung.**

At a state term, to wit, the July Term, A. D. 1912,
of the District Court of the United States of
America, in and for the Southern District of
California, Southern Division, held at the court-
room thereof, in the city of Los Angeles, on
Friday, the 13th day of December, in the year
of our Lord one thousand nine hundred and
twelve. Present: The Honorable FRANK H.
RUDKIN, District Judge.

No. 464—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

C. W. LUNG et al.,

Defendants.

This cause coming on this day to be heard on the
motion of defendant C. W. Lung in arrest of judg-
ment, and also to be heard on the motion of defend-
ant C. W. Lung for a new trial, and also coming on
for the sentence of defendant C. W. Lung; Edward
A. Regan, Esq., Assistant U. S. Attorney, appearing
as counsel for the United States; defendant C. W.
Lung being present, in custody of the U. S. Marshal,
with his counsel, Geo. L. McKeeby, Esq., and John
B. Redd, Esq.; and the motions of said defendant
Lung in arrest of judgment and for a new trial hav-
ing been argued in support thereof, by Geo. L. Mc-

Keeby, Esq., of counsel for said defendant Lung; and said motions having been submitted to the Court for its consideration and decision; it is now by the Court ordered that the motion of defendant C. W. Lung in arrest of judgment, and also the motion of said defendant for a new trial be, and said motions hereby are denied; and said defendant C. W. Lung having thereupon been called for sentence; and statements in mitigation of sentence having been made by Geo. L. McKeeby, Esq., of counsel for defendant Lung; the Court thereupon pronounces sentence upon said defendant as follows, [37] to wit: The judgment of the Court is, that the defendant C. W. Lung, indicted herein as C. W. Loung, be imprisoned in the United States Penitentiary at McNeil Island, State of Washington, for the term of one (1) year and one (1) day. Defendant is remanded to the custody of the U. S. Marshal. Thereupon, on motion of counsel for defendant Lung, it is ordered that a stay of execution of judgment herein for ten (10) days be, and the same hereby is granted said defendant C. W. Lung. [38]

*In the United States District Court in and for the
Southern District of California, Southern
Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. W. LUNG, MARTIN MENDOZA, MANUEL
MENDOZA, L. W. NOEL, ME HONG, JOA-
QUIN NAND and ARTHUR DALY,

Defendants.

Bill of Exceptions.

Be it remembered that heretofore, to wit, on the 8th day of March, 1912, the Grand Jury of the United States, in and for the Southern District of California, Southern Division, did find and return into the above-entitled court, its indictment No. 464, against C. W. Lung, Martin Mendoza, Manuel Mendoza, L. W. Noel, Me Hong, Joaquin Nand and Arthur Daly, defendants, for a violation of Section 37 of the Penal Code of the United States of 1910, and thereafter, on the 25th day of March, 1912, said defendant, C. W. Lung, appeared in said court with counsel, and was duly arraigned upon said indictment No. 464, and thereafter, on the 22d day of April, 1912, the said defendant, C. W. Lung, appeared in court with counsel, and entered his plea of not guilty to said indictment No. 464, before said court, and thereafter, on the 25th day of November, in the year of our Lord one thousand nine hundred

and twelve, before me, Frank R. Rudkin, Judge of the United States District Court, for the Eastern District of Washington, sitting as Judge for the United States District Court for the Southern District of California, in the City of Los Angeles, within the Southern Division of the Southern District of California, this cause came on regularly for trial, Edward A. Regan, Esq., Assistant United States Attorney for the Southern District [39*—1†] of California appearing on behalf of the United States and Messrs. McKeeby and Redd appearing on behalf of defendant, C. W. Lung, said defendant, C. W. Lung, being present in court.

Whereupon a jury was duly impaneled and sworn and thereupon the following evidence was introduced on behalf of the United States and on behalf of said defendant Lung.

Said action was continued and on trial from day to day until the 27th day of November, 1912, when the jury was duly charged by said court and retired, and said jury thereafter, on said 27th day of November, 1912, duly and regularly returned into said court their verdict finding the said C. W. Lung guilty as charged in said indictment No. 464.

That thereafter on the 9th day of December, 1912, defendant, C. W. Lung, moving the Court in arrest of judgment, and for a motion for a new trial and which said motions were, on the 13th day of December, 1912, by the said Court, duly and regularly heard

*Page number of Original Certified Transcript of Record.

†Original page-number in Bill of Exceptions as same appears in Original Certified Transcript of Record.

and denied, and thereupon said Court duly and regularly pronounced judgment and sentenced said defendant, C. W. Lung, adjudging that he serve a period of one year and one day in the United States penitentiary at McNeil's Island, Washington. Whereupon defendant C. W. Lung petitioned for a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit, which said petition was allowed by this Court on the 28th day of January, 1913. [40—2]

[Testimony of Martin Mendoza, for Plaintiff.]

MARTIN MENDOZA, witness called in behalf of the United States, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. REGAN.)

Q. Your name is Martin Mendoza?

A. Yes, sir.

Q. Where do you live, Mr. Mendoza?

A. San Diego.

Q. How long have you lived in San Diego?

A. I lived for about seven years.

Q. You were one of the defendants in this charge, indictment No. 464, weren't you? A. Yes, sir.

Mr. McKEEBY.—If the Court please, we object to that as not the best evidence.

Mr. REGAN.—Why, if the Court please, I spoke to counsel before Court—

Mr. McKEEBY.—Well, I want the record to show.

Mr. REGAN.—Whether or not that was satisfactory; I will produce the records.

(Testimony of Martin Mendoza.)

Mr. McKEEBY.—I don't care to produce the record, Mr. Regan. All I want the record to show is that you have examined the record, and that it was in this case that this man plead guilty.

The COURT.—I presume there is no dispute over that.

Mr. McKEEBY.—We will stipulate this man plead guilty if Mr. Regan says it was in this particular case, your Honor, we will stipulate that it is the fact, but I want the record to show it, not a private agreement between Mr. Regan and myself.

The COURT.—It does show it now. [41—3]

Mr. REGAN.—He testified to it; you have objected; it is not the best evidence.

Mr. McKEEBY.—Does he know whether it is in this case, or the other case? He is charged in two indictments.

Mr. REGAN.—I spoke to you about it before Court convened whether or not it would be satisfactory to prove by this witness he had plead in this case, and you said it would.

Mr. McKEEBY.—If you say it is this case, but I want the record to show it.

The COURT.—This is the same case where the conspiracy is to smuggle Chinamen into this country; that is the case in which you plead guilty, is it?

The WITNESS.—Yes.

Mr. REGAN.—There is another case 463, another indictment which has not been spoken of. I was talking about 464. What do I understand the condition of the record is, this witness testified?

(Testimony of Martin Mendoza.)

Mr. McKEEBY.—Plead guilty in this particular case.

Q. (By Mr. REGAN.) Do you know Mr. Noel, Lewis Noel? A. Yes.

Q. And a man named Mendoza, your brother?

A. Yes, sir.

Q. He is one of the defendants in this action? Me Hong, do you know him? A. I do.

Q. Do you know Joaquin Nand? A. I do.

Q. In the fall of 1911, in November, 1911, where were you living? A. I was living in San Diego.

Q. During that month did you see Mr. Noel?

A. I did. [42—4]

Q. Did you make any trips to Tia Juana that month? A. I did.

Mr. McKEEBY.—Now, if the Court please, we object to this as indefinite. He says during the fall of 1911, and now he is asking him about some months—I would like to have the month designated.

The COURT.—I will let you go into that on cross-examination, if you desire.

Mr. REGAN.—I designated the month of November, did you so understand me, Mr. Mendoza?

A. Yes, sir.

Q. You are talking about the month of November, 1911? A. Yes, sir.

Q. In your trips to Tia Juana did you see Me Hong? A. I did.

Q. Did you have any conversation with him in reference to bringing any Chinamen over into the United States? A. Yes, sir.

(Testimony of Martin Mendoza.)

Q. Now, about that same time did you have any conversation with Noel in reference to bringing Chinamen over into the United States?

A. Yes, sir.

Q. And where did you talk to Noel about bringing Chinamen over to the United States?

A. Why the first time I talked with him was in San Diego.

Q. You had several talks with him, did you?

A. Yes, sir.

Q. And what was Noel's duty with reference to bringing those Chinamen over into the United States?

A. Why, he agreed with me on the proposition.

Q. He ran the automobile? A. Yes, sir.

Q. Now, in November, 1911, did you get Noel to make any arrangements about going down and getting any Chinamen? [43—5]

A. Yes, sir, we did.

Q. And with whom did you make the arrangement about the Chinamen coming across the line?

A. With a Chinaman by the name of Me Hong at Tia Juana.

Q. At Tia Juana? A. Yes, sir.

Q. Was that Chinaman brought across the line?

A. Yes, sir.

Mr. REDD.—Now, if the Court please, we object. I suppose these questions are leading up to a point to establish conspiracy. As I understand this man has plead guilty to being one of the parties to that conspiracy. My understanding of the law is, and that

(Testimony of Martin Mendoza.)

is our objection, that they cannot establish a conspiracy by a co-conspirator.

The COURT.—They can't establish their whole case at once. I will determine whether or not they establish—

Mr. REDD.—Well, I want it understood and have your Honor rule on it at this time, is this, that this evidence will go in subject to a motion to be stricken out unless the conspiracy is established other than by evidence.

The COURT.—I will direct a verdict for the defendant if there is no competent evidence to establish a conspiracy, at the close of the case.

Mr. REGAN.—I understand, if the Court please, that the plea of guilty of the defendant establishes the fact that a conspiracy existed. We cannot, of course, attach every defendant to it, at the outset.

Mr. REDD.—I do not understand the law is whether a plea of guilty—(interrupted).

The COURT.—I have doubts of the correctness of that rule, although I think it was announced by one of our district judges. You may proceed with your testimony. [44—6]

Mr. REDD.—I do not understand that they can establish conspiracy by a co-conspirator, but that evidence may be accepted.

The COURT.—It is competent testimony, but I cannot judge of its sufficiency at this time. Proceed with the examination.

Q. (By Mr. REGAN.) Now, you interviewed Me Hong, did you, about bringing Chinamen over across

(Testimony of Martin Mendoza.)

the line? A. Yes, sir.

Q. What arrangements were made?

A. Why, the arrangement at that time was to bring him across the line, and bring him here to Los Angeles.

Q. And where were you to get them?

A. Why, at the boundary line—just to get them across and put them in the machine, and bring them to Los Angeles.

Q. That is down on—what do they call that country—that is the Otay Mesa?

A. That is the Otay Mesa and Tia Juana Valley both.

Q. Where were you to bring these Chinamen?

A. Why, here to Los Angeles.

Q. To whom? A. To C. W. Lung.

Q. To C. W. Lung? A. Yes, sir.

Q. Whereabouts in Los Angeles?

A. Why, to some stalls here—let's see, there is Alameda or Second Street or Third Street, somewhere around there, I am not acquainted here in the town, and I couldn't tell.

Q. Did you have an address? A. I did.

Q. Where to bring them? A. Yes, sir.

Q. A card? [45—7] A. Yes, sir; a card.

Q. Who gave you that card? A. Me Hong.

Q. What name did it have on it? A. W. Lung.

Q. And some address in Los Angeles?

A. Yes, sir.

Q. Now, did you get Mr. Noel to bring a Chinaman up over the line? A. Yes, sir.

(Testimony of Martin Mendoza.)

Q. About when? A. On about the—

Q. I mean November. A. 27th of November.

Q. Somewhere about the 27th of November?

A. Yes.

Q. And how many Chinamen did you bring up?

A. Two.

Q. Where did these Chinamen come from?

A. From Mexico, in Ensenada.

Q. From Ensenada? A. Yes, sir.

Q. Did you know anybody down at Ensenada?

A. Yes.

Q. Who? A. Joaquin Nand.

Q. This Chinaman came from Joaquin Nand to Me Hong? A. Yes, sir.

Q. Then in your possession?

A. In my possession.

Q. How many Chinamen did you and Noel get on this first trip? A. Two. [46—8]

Q. Two Chinamen? A. Yes, sir.

Q. And after you put them in the automobile, what did you do?

A. Why, we left there for this town of Los Angeles.

Q. For Los Angeles? A. Yes, sir.

Q. Did you reach Los Angeles? A. Yes, sir.

Q. Where did you go when you reached Los Angeles?

A. We got here about two o'clock in the morning, went over and took a lunch first; then about six or seven o'clock we went to the Chinese town, went to that address; then went to the Lung Stalls and saw

(Testimony of Martin Mendoza.)

Mr. Lung and he took me to the place where they were living.

Q. When you got to Lung's place, that was down in one of these stalls, you say? A. Yes, sir.

Q. Now, when you—

Mr. McKEEBY.—Well, if the Court please, we object to counsel leading the witness here; let the witness go ahead and tell. He has asked him leading questions here and leading questions.

Mr. REGAN.—I think he has already testified to that, Mr. McKeeby.

Mr. McKEEBY.—I know he has testified to that, but let him go ahead and tell what he did, not lead him along and not suggest to him every question he should answer.

Q. After you reached Lung's stall was there any sign there? A. Yes, sir.

Q. What did it say?

A. C. W. Lung, right along in front of the stalls.

Q. After you got there what did you do?

A. I went there and talked to Mr. Lung.

Q. Did you have anything to give him? [47—9]

A. Yes, sir, I had a letter.

Q. And where did you get the letter?

A. At Tia Juana.

Q. From whom? A. From Me Hong.

Q. Was it written in English or Chinese?

A. Chinese.

Q. What did you do with that letter?

A. I gave it to Mr. Me Hong or Mr. Lung.

Q. The defendant here?

(Testimony of Martin Mendoza.)

A. The defendant; yes, sir.

Q. What did you do after he gave you the letter—or what did he do after you gave him the letter?

A. He told me to go to Rose Street and deliver those chinks, and he went with me.

Q. How far was that from the Stall?

A. Oh, I think a couple of blocks.

Q. What happened after you got to Rose Street?

A. Why, I went in back of the house in there and put off the two Chinamen. He was in the back door. I met him there and I turned back and went to the stalls again.

Q. Who opened the door of the house?

A. The defendant Lung.

Q. Mr. Lung? A. Yes.

Q. Then you went back to the stall?

A. Yes, sir.

Q. How did you get any money at that time?

A. I got ten dollars just as we went back to the stall.

Q. What was said about money at that time, if anything?

A. He said the bank was closed at that time of the morning, and for me to come back after the bank opened; he was going to send a girl to the bank and get the rest of the [48—10] money.

Q. And did you come back afterwards?

A. Yes, sir.

Q. Where did you come back to?

A. Came back to the stalls again.

Q. Did you see Mr. Lung? A. I did.

(Testimony of Martin Mendoza.)

Q. Did you have any conversation with him at that time? A. Yes, sir.

Mr. McKEEBY.—If the Court please, I think this witness can go ahead and tell everything he did there without being led by counsel that way.

The COURT.—These questions are not leading, if I understand the rule.

Mr. McKEEBY.—Well, I think they are leading, your Honor.

The COURT.—They don't suggest the answer at all.

(Exception.)

Q. Did you have any money transactions with him at that time?

A. When I went back to the stalls; yes, sir; he paid me the rest of the money.

Q. How much did he pay you? A. \$290.00.

Q. Now, how did he come to pay you \$290.00—that is, I want to know whether you suggested the amount or not? A. Why, he knew, I suppose.

Q. Did you name the amount?

A. No, sir; I made the contract.

Q. Did you have any understanding as to how much you were to receive?

A. Why, back there at Tia Juana, yes,—not with Mr. Lung, but Mr. Lung seemed to know what he was going to give me. [49—11]

Q. How much,—that was with Me Hong?

A. With Mr. Lung.

Q. Well, I say your understanding back in Tia Juana? A. Yes.

(Testimony of Martin Mendoza.)

Q. Was with whom? A. With Me Hong, yes.

Q. That you were to get how much a Chinaman?

A. \$150.00 apiece.

Q. Now, after Lung paid you this \$290.00, did you have any conversation with him, then further?

A. Yes, sir.

Q. Along what line?

A. Why, he said he had some more Chinamen in Mexico I could bring for him, he said if I will be careful we can make business maybe, and I also said to be very careful, because if we was caught once and it was proved what we done—also said could make money, could both make money.

Q. Did you have any further conversation with him at that time?

A. Why, he also said he had some opium there to bring across.

Mr. McKEEBY.—Now, if the Court please, we object to any conversation not fixing the time, place and parties present; no foundation laid.

Mr. REGAN.—He is relating the same conversation.

Mr. McKEEBY.—I move to strike out the other conversation until the time, place and parties present are fixed.

The COURT.—I think the conversation is about other matters, and would not be competent anyhow.

Mr. REGAN.—I did not want that. I was after some other.

Q. Was there anything said at that time—I am speaking now of the time Lung paid you the money

(Testimony of Martin Mendoza.)

at his stall—that would be about the 27th of November?

A. Yes, sir; about the 27th or 28th of November.
[50—12]

Q. Do you understand the time I am talking about? A. Yes, sir.

Q. Was there anything said at that time about Joaquin Nand? A. Yes, sir.

Mr. McKEEBY.—Just a moment,—the same objection—no foundation laid as to the parties present, if the Court please.

The COURT.—I don't understand you have to lay a foundation as to the parties present, as to the date, or anything, when you are proving a conversation, except for the purpose of impeachment, and that is not the purpose of this.

Mr. McKEEBY.—I think the law in this State and in the United States is this: the time, place and parties present must *must* be first laid before you can go into it.

The COURT.—I have been in the United States all my life, and that is certainly not the law in the Northern part of the United States, and I will overrule the objection. (Exception.)

(Last question read.)

A. He said it was a party the name of Joaquin Nand there—I knew there too—I saw him and he said he had some Chinamen at Ensenada if Me Hong wouldn't have any at Tia Juana, why, Joaquin Nand would have at Ensenada all so busy, that they bring them in across.

(Testimony of Martin Mendoza.)

Q. Now, after that you left Lung on that day where did you go with reference to your returning to San Diego?

A. Why, we went to San Diego, and we took a trip to Tia Juana again.

Q. And with whom, took a trip to Tia Juana?

A. Mr. Noel.

Q. Mr. Noel and you? A. Yes, sir.

Q. Whom did you see at Tia Juana?

A. I saw Me Hong, and told him again I would deliver the parties. [51—13]

Mr. McKEEBY.—We object to anything that he may have told Me Hong outside of the presence of either one of these defendants, and move to strike it out.

The COURT.—It may tend to prove a conspiracy; it may connect these parties with it; he can't prove all his case at once. It is not binding upon these defendants or either of them, except in so far as it may tend to establish a conspiracy between the other parties.

Q. Did you, subsequent to November 27th, that trip of November 27th, after that did you make any arrangements about making another trip?

A. Yes, sir.

Q. And about when was that?

A. About the 7th or 8th of December.

Q. 7th or 8th of December? A. Yes, sir.

Q. And with whom did you make those arrangements? A. With Joaquin Nand.

Q. With Joaquin Nand? A. Yes, sir.

(Testimony of Martin Mendoza.)

Q. At Tia Juana? A. Yes, sir.

Q. And how many Chinamen were you to bring with you? A. Three.

Q. And bring them from Tia Juana? Where?

A. To Los Angeles, to here in this town.

Q. Now, were they brought from Tia Juana?

A. Yes, sir.

Q. Where to?

A. To this town here, to Los Angeles.

Q. And whom were they brought by? By whom were they brought?

A. By Joaquin Nand and Me Hong.

Q. Were they brought to Los Angeles by these two? [52—14]

A. Right to the International border line, then me and Mr. Noel brought them over.

Q. How many did you bring the second time?

A. Three.

Q. Three? A. Yes, sir.

Q. What road did you come by on this second trip? A. On what they call the Inland Road?

Q. The Inland Road? A. Yes, sir, Temecula.

Q. That took you through Temecula?

A. Yes, sir.

Q. How were they, the Chinamen dressed?

A. In ladies' style, ladies' skirts, ladies' hats.

Q. And did anything happen to you at Temecula?

A. Yes, sir; had a wreck there, one of the wheels broke.

Q. A wreck? A. Yes, sir.

Q. What did you do after the wreck? What did

(Testimony of Martin Mendoza.)

you do with the Chinamen?

A. Why, we went, we sent a young fellow to Temecula who was coming right behind us on a wheel—we sent him back to Temecula to get the garage man to help us out, pull the machine where it was, so as to get a wheel there for the machine. We couldn't get a wheel. So we telephoned to San Diego for to get a wheel. About eleven o'clock I think, or half-past eleven, Mr. Walling came with a wheel from San Diego.

Q. Mr. Walling brought a wheel from San Diego?

A. Yes, sir.

Q. And where did you have the Chinamen while you broke down?

A. Why, kind of back in the house there, near where we had the wreck—we put them in there.

[53—15]

Q. What was there around that house there?

A. Willow trees, brush and stuff.

Q. After Walling brought out this wheel what happened?

A. Why, then we put on the wheel—all we had to do—we had the machine on the jack then—that is all we had to do, put the wheel on the machine, and started and came here to Los Angeles then.

Q. What time did you get in Los Angeles?

A. About seven o'clock the next morning.

Q. Who was with you on this trip?

A. Why, Manuel, my brother, and Noel, Mr. Noel.

Q. And by the way, where is your brother now?

A. Why, he is at home in San Diego.

(Testimony of Martin Mendoza.)

Q. Anything the matter with him?

A. Yes, sir.

Mr. McKEEBY.—If the Court please, we object to that as incompetent, irrelevant and immaterial.

The COURT.—I don't think that is material.

Mr. REGAN.—Well, it might not be at this time; but I think it is competent for the Government to show at some time during the case—

Mr. McKEEBY.—If the Court please, what counsel is going to say I do not think is a proper matter to go before this jury at this present time. If it becomes proper later on we have no objections, but I do not think at this time it is a proper matter to go before the jury.

Mr. REGAN.—What ever the Court does is satisfactory.

The COURT.—I suppose the Government will be criticized for not producing witnesses, and that is a good reason for not bringing them.

Mr. McKEEBY.—I don't think at this time it is competent until they are accused of it.

The COURT.—The trouble is when that criticism comes it will be [54—16] too late.

Mr. McKEEBY.—I am willing to stipulate here that this man's brother is physically incapable of being here at the present time, and that the Government is not to blame.

The COURT.—That is all right then. That covers the ground.

Mr. REGAN.—That says it very clearly and concisely, Mr. McKeeby.

(Testimony of Martin Mendoza.)

Mr. McKEEBY.—I want to be fair, Mr. Regan, but I don't want you to slip things over on me.

Q. You were telling us who was with you on that trip.

A. Yes, sir, Mr. Noel and my brother.

Q. And the three—

A. And the three Chinamen.

Q. Now, where did you go when you reached Los Angeles? A. We go to 601 East 4th Street.

Q. In this city? A. Yes, sir.

Q. What did you do after you got there?

A. Why, I jumped off the machine, there and I went to the door and knocked at the door, and a "chink" came there to the door; I had a letter and gave him the letter. He goes back again and brings another fellow. He says, "Where's the chink?" I have got him in the machine there in front door, right by the curb. "Go right around to the back door," he says. I went around to the back door, and the chink goes to the back door and opens the door, and I just pushed him in there, and he says, "Come here at eleven o'clock, and you will get your money."

Q. Where did you get this address 601 East Fourth Street? A. Of Joaquin Nand.

Q. From whom? A. From Joaquin Nand.

Q. This letter that you received from Joaquin Nand, and delivered to this Chinaman, was it in English or in Chinese? [55—17] A. Chinese.

Q. Now, did you return to this house about eleven o'clock? A. Yes, sir.

(Testimony of Martin Mendoza.)

Q. Before returning to the house, and after delivering the Chinamen did you see Lung?

A. I did.

Q. Where?

A. I saw him at the next corner, I think it is Central Avenue.

Q. How far away from where you delivered the Chinamen?

A. About a block, I think, or a block and a half.

Q. Who was with you when you met Lung?

A. Noel: Mr. Lung was with him.

Q. Did you have a conversation with him at that time? A. Yes, sir, yes.

Q. What was that conversation?

A. Why, he was standing on the corner there, and was going right by him, around to see him, and then we just stopped right in front of where he was, and he came to the machine and looked in the machine. He says: "You got anything for me?" "No, nothing here." "Now," he says, "I send a letter to Tia Juana, and a letter for you also; we got two 'Chinks' there ready, one at Tia Juana, one Chinese here at San Diego; also some opium; I wish you would go right back there and get them for me." I says, "All right; we go right back."

Q. Now, did you have some further conversation as to when you were going to bring them back?

A. Yes, sir, I told them just as soon as I go back to San Diego—told him that on the—on or about the 11th of December—and they come around with them.

Q. What day of the week was that?

(Testimony of Martin Mendoza.)

A. About Monday, I think—about Monday, I think, if I remember right. [56—18]

Q. Well, what I am talking about now, you understand, I am talking about the conversation you had with Lung. A. Yes, sir.

Q. In that conversation did you say something as to when you were to bring them back?

A. Bring that other right back; yes, sir; I told them that on or about *the* December the 11th.

Q. That you would get them back to Los Angeles?

A. Yes, sir, go to Tia Juana.

Q. And about when was this you had this talk with Lung in Los Angeles here?

A. Well, it was about December the 8th, I think, or about December the 8th.

Q. Did you make any arrangements about seeing Lung in San Diego that time? A. Yes, sir.

Q. What arrangements did you make at that time?

A. He said he will go to San Diego and find out for sure whether this party arrived in San Diego—this Chinaman ready to come we will meet there.

Q. Now, before you left, before you made this second trip, did you see Lung in San Diego?

A. Yes, sir.

Q. And about how long before you left on your second trip?

A. A day or two after we made the second trip.

Q. A day or two before you made your second trip? A. Yes.

Q. And you got to Los Angeles on your second trip about the 8th of December?

(Testimony of Martin Mendoza.)

A. On my second trip?

Q. Yes. A. Yes, sir, I think so.

Q. Somewhere around that?

A. Yes. [57—19]

Q. And a day or two before that you saw Lung?

A. Yes, sir.

Q. Did you have a talk with him at that time?

A. Yes, sir.

Q. With reference to what?

A. With reference to this party that was in San Diego; he told me he could not come, could not bring him on account of the money was not ready there to be paid for him, so he told me just to go to Tia Juana and get this one chink that was with Me Hong.

Q. Now, after you made your second trip, and after you delivered this Chinaman at 601 East Fourth Street where did you go?

A. I went to San Diego.

Q. Well, before you went to San Diego, where did you go? Did you meet anybody up here in Los Angeles?

A. Yes, I met a fellow by the name of Burgess.

Q. Where did you meet him?

A. I met him at the Jeffries saloon.

Q. On Spring Street. A. On Spring Street.

Q. Was that before or after you had been paid this money at 601 East Fourth Street? A. Before.

Q. When you went back to 601 East Fourth Street he was in the machine? A. Yes, sir.

Q. Did you go to any garage up here in the city at that time? A. Yes, we did.

(Testimony of Martin Mendoza.)

Q. Where was it do you remember?

A. I don't remember, I don't know the streets here very well; I am not acquainted with the town.

[58—20]

Q. Did you buy anything there?

A. Buyed some gasoline, yes.

Q. What was the condition of your foot that day?

A. I had a sore toe.

Q. And how about your shoe?

A. I had a hole cut off at the toe of the shoe.

Q. Who returned to San Diego with you?

A. This party Burgess, whatever his name is.

Q. Burgess went back with you? A. Yes, sir.

Q. And Manuel? A. My brother.

Q. Noel and yourself? A. Yes, sir.

Q. Did you leave that same day for San Diego?

A. Yes, sir.

Q. Now, after you had gotten back to San Diego, did you again see Me Hong?

A. I saw him the next day, yes.

Q. In reference to what?

A. About the parties we had delivered.

Q. And did you do anything in relation to making this third trip, concerning which Lung had talked to you about? A. Yes, sir.

Q. And what did you do in reference to that?

A. I told him that I had seen Lung here in Los Angeles, and spoke about this fellow they had there at the restaurant; he was here ready—there was no smoking—well, he can come along, that was on Sunday had him ready; so we went back to San Diego

(Testimony of Martin Mendoza.)

again, and on the following Monday we could not go, and Tuesday I went there.

Q. What did you go down there for Tuesday?

A. To get this Sing. [59—21]

Q. To get Chin Sing? A. Yes, sir.

Q. Did you see Me Hong? A. I did.

Q. Did you have any conversation with him about this Chin Sing?

A. Yes, sir; I talked with him; I says, "I will take him right to the line there for you; that is all right." I went right back to San Diego then and wait for you in the machine.

Q. And did you? A. Yes, sir.

Q. Did you leave San Diego again?

A. Yes, sir, I came back to San Diego—I only started in the evening about—oh, about eight o'clock, I think—I guess about eight o'clock, and then I met Me Hong right by the Mesa, Tia Juana Valley; got this chink got him in the machine; there was also a package of opium; that is the trip we got caught.

Q. And you left immediately for Los Angeles?

A. Yes, sir.

Q. How far did you get?

A. Why, about a mile and a half from Capa Strano, San Juan Capistrano.

Q. Who was in the machine at that time?

A. Noel and I.

Q. And this Chinaman? A. This Chinaman.

Q. Then what happened to you?

A. Why, then a couple of immigration officers there and a deputy sheriff were riding by the grade,

(Testimony of Martin Mendoza.)

flagged us down and we came to a stop. We stopped; then they came back to the machine, and the fellow looked in the bottom of the machine,—what you got in there? They reached in and found this chink—bring him right up, and we had to open the tool-box of the machine, and they got the opium also, then they put us under arrest, and took us back to San Diego. [60—22]

Q. Where were you headed for, where were you going with that Chinaman?

A. We were coming here to Los Angeles.

Q. To deliver him to whom?

A. To C. W. Lung.

Q. To C. W. Lung? A. Yes, sir.

Q. Now, what money did you get on your second trip, the money you received at 601 East Fourth Street, how much did you get?

A. We got \$450.00.

Q. \$450.00? A. Yes.

Q. That is the time you delivered how many Chinese? A. Three.

Q. Now, at the time you were arrested did you have any arms with you?

A. I had a revolver, yes, sir.

Q. You had a revolver? A. Yes, sir.

Q. I show you this revolver, and ask you whether or not that is the revolver you had with you at the time you were arrested. A. This is my revolver.

Q. That is the revolver you had? A. Yes, sir.

Q. Where did you get it and when?

A. I bought it here in Los Angeles at Hoegg's

(Testimony of Martin Mendoza.)

place—the time I made the second trip.

Q. Was Burgess with you at that time?

A. Yes, sir; we left him with the machine; I got him in the store.

Q. Were you there when this outfit was purchased? A. Yes, sir.

Q. Revolver, belt and cartridge? A. Yes, sir.

Q. Where was Burgess? A. At Hoegg's store.

Q. At the same time your gun was purchased?

A. Yes, sir.

Q. Who carried that, if anybody? A. Noel.

Q. Noel wore that? A. Yes, sir. [61—23]

Q. At the time of his arrest? A. Yes, sir.

Mr. REGAN.—Now, I offer in evidence this revolver, No. 156,075, and ask that it be marked United States Exhibit 1.

Mr. McKEEBY.—We have no objection; of course all this evidence is going in subject to the motion to strike out, unless the evidence is properly connected, your Honor.

The same having been admitted in evidence was marked United States Exhibit 1.

Mr. REGAN.—United States Exhibit 2 is a Smith & Wesson, 153,755, to be marked United States Exhibit 2, including the belt and the cartridges.

The same having been admitted in evidence was marked United States Exhibit 2.

Q. (By Mr. REGAN.) Now, referring back to the first time you saw Mr. Lung—that is at the first trip you made, when you saw him at the stall, did you see anybody else there at the stall?

(Testimony of Martin Mendoza.)

A. Why, there was somebody working around there.

Q. What sort of an arrangement did he have for his own office?

A. Why, he had kind of a platform in the corner of the stalls, on the inside, of course, and a kind of office there; it was nothing no walls around him, just the floor.

Q. Was there anybody else there?

A. There was a young lady.

Q. A young lady? A. Yes, sir.

Q. Have you seen her since? A. Yes, sir.

Q. Seen her here?

A. Seen her a while ago before the witnesses were—

Q. When you had your conversation with Lung, were you talking near the lady or to one side?

A. A little to one side.

Q. How did he talk? How did Lung talk? Did he talk in an ordinary tone of voice or talk low?

A. Oh, rather low.

Q. Now, at that time, or about that time, at one of these two conversations that you had on your first trip, did he give [62—24] you anything?

A. He gave me a card; yes, sir.

Q. I will show you that card, and ask you whether or not that is the card he gave you?

A. That is the card.

Q. Calling your attention to the writing on that, the American name and the Chinese name, and everything excepting the signature in the lower

(Testimony of Martin Mendoza.)

right-hand corner, do you know who wrote that?

A. Why, Mr. Lung; Mr. Lung gave it to me the way it is.

Q. Mr. Lung gave it to you this way?

A. Yes, sir.

Q. And what did he give you this for?

A. To meet me at Marchessault street.

Mr. REGAN.—I offer this in evidence, and ask that it be marked U. S. Exhibit 3. It reads “D. C. W. Lung, Wing Chong, Hong Sing. I will see you again to-morrow, 309 Marchessault Street.”

Mr. McKEEBY.—Just read the rest of it in also.

Mr. REGAN.—Mark of identification in the upper right hand, Ex. “E” in lower right-hand corner; Signature G. T. Jones—that is, will you stipulate that is the signature of Mr. Jones, the Government Inspector?

Mr. McKEEBY.—I don’t know Mr. Jones. I never heard of him before.

Mr. REGAN.—All right, there is the signature in the lower right-hand corner. There is the name Jones.

Mr. McKEEBY.—There is the name G. T. Jones down there in the lower right-hand corner, D. T. or D. G. or D. F.—something like that.

Q. (By Mr. REGAN.) Now, about December 1st of last year, did you receive any telegram from Joaquin Nand? A. I did.

Q. I will show you this telegram, and ask you whether or not that is the telegram you received from Joaquin Nand.

(Testimony of Martin Mendoza.)

Mr. McKEEBY.—If the Court please, we object to the question in that form, as the telegram he received from Joaquin Nand is the telegram he received.

The COURT.—I will sustain the objection to the latter part of [63—25] the question. Is Joaquin Nand a Chinaman?

Mr. REGAN.—Yes, sir.

Mr. McKEEBY.—I don't know, that is a Mexican name—that he is in the same class as this fellow.

Q. (By Mr. REGAN.) What do they call him for short? A. Joaquin Nand.

Q. What do they call him for short?

A. That is the only name I know of.

Q. They call him Nand? A. Nand, yes.

Q. You received that telegram, you say?

A. Yes.

Q. And about when?

A. About December the 1st, isn't it?

Q. In Spanish? A. Yes, sir.

Q. Will you translate it, please?

Mr. McKEEBY.—If the Court please, we object to this witness translating that telegram. I believe the Court has an official interpreter to interpret such matters.

The COURT.—Yes, I presume as a witness in the case he shouldn't do it. If there was any dispute afterwards, he might see if it were correct or not.

Mr. McKEEBY.—This gentleman here can translate it.

Mr. REGAN.—All right; there is no need inter-

(Testimony of Martin Mendoza.)

preting it; it is not important enough for that.

Q. (By Mr. REGAN.) After your second trip on your return to San Diego, after making your second trip about the 8th of December, did you see Mr. Walling? A. Yes, sir.

Q. Did you have any conversation with Walling at that time? A. We did.

Q. And about what?

A. About arrangements to buy an automobile from him.

Q. For how much? A. For \$1,500.00.

Q. Did you make any payment on it?

A. We did.

Q. How much? A. Three hundred. [64—26]

Q. Three hundred dollars? A. Yes, sir.

Q. Did you get a receipt for it? A. I did.

Mr. McKEEBY.—Of course, we object to that as incompetent, irrelevant and immaterial, your Honor.

The COURT.—I do not see the relevancy of it at the present time.

Mr. McKEEBY.—That is just the idea, your Honor; I suppose this whole testimony can go in, and save the time of this Court, subject to a motion to strike it all out, and to take up the relevancy of it later on.

The COURT.—Very well; that will be satisfactory.

Mr. McKEEBY.—We don't care to take up the time of this Court to quibble about anything; we simply want the facts here.

Q. (By Mr. REGAN.) Is that the receipt?

(Testimony of Martin Mendoza.)

A. Yes, sir.

Q. Do you know whose writing that is?

A. Yes, sir.

Q. Whose? A. Mr. Walling's.

Q. You saw him write it? A. Yes, sir.

Q. What did he do with it after he had written it?

A. He gave it to me.

Mr. REGAN.—I now introduce in evidence this receipt and ask that it be marked U. S. Exhibit 4.

Mr. McKEEBY.—I might suggest here, your Honor—I suppose our objection and exceptions are entered to all of this line of testimony.

The COURT.—Yes, that may be understood, Mr. McKeeby.

Mr. REGAN.—Reading from U. S. Exhibit 4 “upper left-hand corner \$300.00, December 8th, 1911, received of L. W. Noel and F. M. Mendoza \$300.00 on account. O. A. Walling.”

The same having been admitted in evidence was marked U. S. Exhibit 4.

Mr. REGAN.—You may cross-examine. [65—27]

Cross-examination.

(By Mr. McKEEBY.)

Q. Mr. Mendoza, what relation are you to Joaquin Nand? A. None whatever.

Q. Are you the same nationality? A. No, sir.

Q. No? A. No, sir.

Q. What is he, a Mexican?

A. He is a Chinaman.

Q. He is a Chinaman, but he has a Mexican name?

(Testimony of Martin Mendoza.)

A. Yes, sir.

Q. Are you a Mexican? A. Yes, sir.

Q. What are you known in the Chinese language?

A. I haven't any at all.

Q. Haven't you a Chinese name at all?

A. No, sir.

Q. Now, whereabouts in Los Angeles did you first see C. W. Lung?

A. I saw him on the stalls—I think it is on Third or Second or Third and Alameda Street.

Q. On Second, between Second and Third on Alameda Street?

A. It is not between the block—it is either on Third or Second Street.

Q. You are positive of that, are you?

A. Yes, sir.

Q. And what was the sign over his business?

A. C. W. Lung.

Q. C. W. Lung? A. Yes, sir.

Q. You are sure of that too? A. Yes, sir.

Q. Now, when was that?

A. That was on or about the 27th or 28th of November, 1911.

Q. Of last year? A. Yes, sir.

Q. And what was his business there?

A. Why, I could see vegetable business concern there.

Q. You saw him first there in these stalls on Third Street, near Alameda? A. Yes, sir.

Q. Where did you go from there?

A. We go to Rose Street.

(Testimony of Martin Mendoza.)

Q. What number on Rose Street?

A. I couldn't tell the number on the house. [66—28]

Q. Well, whereabouts on Rose Street, between what streets?

A. Why, I am not acquainted with the streets here, and I couldn't tell.

Q. How many blocks did you go?

A. I should judge about two blocks.

Q. Only about two blocks?

A. Yes, sir; went right on Alameda, and on to Rose Street.

Q. Did Lung go with you on the car?

A. He didn't go on the car; he went through kind of alley, out short through an alley; then he went on Alameda into Rose Street.

Q. Was he with you?

A. He was waiting for me.

Q. You went in the automobile?

A. Yes, sir; he walked.

Q. How long did it take you to get from there over to Rose Street from where you saw him in the stalls?

A. I could not tell you just now; can't remember. We had to come back to Alameda; then went back either to Second Street or—I don't know what street it is; anyway, went back to Rose Street, and he cut across to an alley.

Q. Now, then, you went back to the—did you have these two Chinamen in the car all the time?

A. Yes, sir.

(Testimony of Martin Mendoza.)

Q. They were in the car, were they dressed as women at that time? A. No, sir.

Q. When did they change their clothing?

A. We did not *undress* them as women.

Q. What time of day was that?

A. It must have been about 7 o'clock in the morning.

Q. Who was present at the stalls when you got there? A. Oh, there was a lot of Chinamen there.

Q. Any white people around?

A. A young lady was there, too.

Q. About seven o'clock in the morning?

A. Yes, sir.

Q. Did you see the young lady?

A. I did. [67—29]

Q. Did you speak to her? A. No, sir.

Q. You had never seen Lung before, had you?

A. No, sir.

Q. How did you know—how did you find out which one was Lung?

A. From another chink, from another Chinaman.

Q. From another Chinaman? A. Yes, sir.

Q. That was standing there?

A. He was working there, yes, sir, and I asked him for him.

Q. Then you went over to the Rose Street house?

A. Yes, sir.

Q. Did you get any money at the Rose Street house? A. No, sir.

Q. Where did you go from the Rose Street house?

A. Came back to the stalls again.

(Testimony of Martin Mendoza.)

Q. Did Lung go back with you in the car?

A. No, sir, went back the same way he did when first we came.

Q. Did you go back to the stalls before he did?

A. Yes.

Q. You got back before he did that time?

A. Yes, sir.

Q. But he got over to Rose Street before you did the other time? A. Yes, sir.

Q. Now, who was present when you got back there? Who was in the car with you?

A. Why, Noel and I.

Q. Nobody else? A. No, sir.

Q. What had you done with the two Chinese who were in the back of the car? A. What is that?

Q. Where were the Chinese that were in the back of the car?

A. Left them at this place I have been speaking about, on Rose Street.

Q. On Rose Street? A. Yes, sir.

Q. Now, where is Rose Street in this city?

A. I can take you there now, but I couldn't tell you where it is, because I am not acquainted in the town here.

Q. Who took you down and showed you where it was? A. Mr. Lung.

Q. Oh, Mr. Lung took you down, did he?

A. Yes, sir.

Q. Who is Mr. Lung?

A. That defendant there.

Q. I thought you said Mr. Lung went on foot?

(Testimony of Martin Mendoza.)

A. Yes. [68—30]

Q. And you went in the car?

A. Yes, sir; he told us where to go.

Q. Now, did you know where Rose Street was?

A. Because he told us the streets where to go.

Q. And did you follow him?

A. We went around the corner, yes, and we saw him standing on the corner at Rose and Second.

Q. Didn't you tell me he was there at the house waiting for you when you got there? A. Yes, sir.

Q. And you just went around the corner, and followed him all the way? A. Yes, sir.

Q. Have you ever been to that house since that time? A. No, sir.

Q. Have you been down to that house in the last three or four days? A. No, sir.

Q. Where is Rose Street located as regards Los Angeles Street in this city?

A. Well, I couldn't tell you; it is closer to Alameda Street than anything I can think of now.

Q. Now, where is it located as regards Sixth Street? A. I am pretty sure—I can't tell you—

Q. Were you ever down on Sixth Street?

Mr. REGAN.—Wait a minute, have you finished your answer?

A. I am not acquainted in the town, but I can go there and find it.

Q. Were you ever down at Sixth Street?

A. Yes, sir.

Q. Sixth and what? A. Sixth and Alameda.

Q. What were you doing down there?

(Testimony of Martin Mendoza.)

A. Oh, been looking for these Chinamen.

Q. Why did you go to Sixth and Alameda?

A. Well, was looking for some house in there, and I—

Q. Who told you to go down there?

A. Well, I had information from—

Q. Well, who told you?

A. A Chinaman in Ensenada.

Q. Who? A. Joaquin Nand. [69—31]

Q. What did he tell you?

A. To go and look for a place at Sixth and Alameda.

Q. And you went to Sixth and Alameda?

A. Yes, sir.

Q. What number did he give you down there?

A. Didn't give me a number—he simply gave me the party.

Q. Who was the party?

A. It was written on a piece of paper, and I have lost it.

Q. Well, who was the party?

A. I couldn't tell you the name of the party now.

Q. White man or Chinaman or Mexican?

A. Chinaman, it was a Chinaman.

Q. It was not C. W. Lung?

A. Not the one that Nand gave me, no.

Q. Nand never gave you that name? A. No.

Q. Never in his life? A. No, sir.

Q. Never spoke to you about C. W. Lung?

A. He did.

(Testimony of Martin Mendoza.)

Q. I thought you just told me he never gave you the name?

A. He did not give me the name, but spoke to me about it.

Q. He spoke to you about it, but he never gave you his name—how did he talk to you about it, if he never mentioned his name to you—how did he talk to you about it?

Mr. REGAN.—I object to that; the witness never said he never mentioned his name.

The COURT.—The witness can explain his answer.

A. I talked with him, but he never gave me no address that time he spoke with me—spoke of Mr. Lung also.

Q. In your presence? A. In my presence.

Q. Yes, sir? A. He spoke to me, yes, sir.

Mr. REGAN.—Who spoke to you—Lung had spoken to you?

A. Yes, sir.

Q. (By Mr. McKEEBY.) Did you ever hear Mr. Nand and Lung talking together? A. No, sir.

Q. Didn't you just tell me they spoke together?

A. They spoke to me about him, I said. [70—32]

Q. Who spoke to you? A. Nand.

Q. Nand? A. Yes, sir.

Q. That is Joaquin? A. Joaquin; yes, sir.

Q. Spoke to you about this man? A. Yes, sir.

Q. Did he give you his address? A. No, sir.

Q. Did he tell you he was at Sixth and Alameda?

A. No, sir; he never told me.

(Testimony of Martin Mendoza.)

Q. Who did tell you he was at Sixth and Alameda?

A. Another Chinaman.

Q. What was the Chinaman's name?

A. Well, I can't tell you; I had it with me.

Q. Can you get it?

A. I do not think so; I lost it or throwed it away.

Q. Did not forget the name of Lung, did you?

A. How is that?

Q. You did not forget the name of Lung?

A. Why, I done some business with him so frequently I didn't get to forget.

Q. You did not forget it because Mr. Connell *tell* you, sitting here, not to, didn't he? A. No, sir.

Mr. REGAN.—That is objected to.

The COURT.—The witness has answered.

Q. Now, Mr. Mendoza, did you find that man at Sixth and Alameda? A. No, sir.

Mr. REGAN.—What man are you talking about?

Mr. McKEEBY.—The man that was going down there, he has forgotten.

Mr. REGAN.—Just when was this time? I don't see the materiality of it.

Mr. McKEEBY.—The materiality of it, he was here on this trip, he says he met Lung; he was down there at Alameda hunting for some Chinamen.

Mr. REGAN.—That is not his testimony at all. You asked him if he was ever down at Sixth and Alameda Streets, and he said yes, [71—33] but you are not referring to this time when he was looking for Lung at all, and the purport of your question is not to that time. You asked him if he was ever

(Testimony of Martin Mendoza.)

down at Sixth and Alameda, and he said yes.

Q. (By Mr. McKEEBY.) Where were you at Sixth and Alameda—we will get this straightened out?

Mr. REGAN.—This is objected to as not proper cross-examination, incompetent, irrelevant and immaterial, unless it applies to the time covered by the direct examination, to wit, the time that he made his first trip to Lung, about November the 26th or 27th, 1911.

Mr. McKEEBY.—If the Court please, I think we have got the right to test this witness' memory as to all these statements.

Q. When were you at Sixth and Alameda Streets?

A. Oh, it was a long time ago, about a year and a half ago.

Q. What were you doing there?

A. I was looking as I said for a Chinaman.

Q. Were you bringing a Chinaman in at that time? A. Yes.

Q. Haven't you been in the smuggling business for a good many years?

Mr. REGAN.—I object to that. There is no purpose to that question, except to cast a reflection on the witness. He has not denied he smuggled Chinamen.

The COURT.—It might have some bearing on his credibility.

Q. (By Mr. McKEEBY.) You have been in the smuggling business for a good many years, have you? A. Yes, sir.

(Testimony of Martin Mendoza.)

Q. And have done business with a good many men? A. Yes, sir.

Q. You never did any business with Lung, except business that you have testified to, did you?

A. Yes, sir.

Q. You did? A. That is all.

Q. That is the only kind? A. Yes, sir.

Q. Now, when you were first arrested, didn't you deny that you [72—34] knew Lung?

A. When I was first arrested?

Q. Yes, sir.

A. No, sir; I couldn't deny it on account of the evidence they got on me.

Q. Didn't you deny it?

A. Well, I didn't; I couldn't deny it.

Q. And didn't you send word to me that Lung would pay you money you would swear that you did not know him? A. No, sir; never done it.

Q. You don't remember that, do you?

A. I remember that I never done it; you never spoke to me or I to you at no time.

Q. I know you never spoke to me, but didn't you send word to me? A. No, sir.

Q. Well, then I was misinformed. Now, when you came up here, you came up on the 7th of December, did you? A. About the 7th of December.

Q. With three Chinamen? A. Yes, sir.

Q. Who was present at that time? Where had you gone? Who was with you when you came up?

A. Noel and Mendoza.

Q. Manuel? A. Yes, sir.

(Testimony of Martin Mendoza.)

Q. That is your brother? A. Yes, sir.

Q. And three Chinamen? A. Yes, sir.

Q. You delivered those Chinamen where?

A. 601 East Fourth St.

Q. To whom?

A. To another Chinaman who was in the house there.

Q. To Chinaman? A. Yes, sir.

Q. You did not see any white man around there at all? A. No, sir.

Q. Who was the Chinaman?

A. Well, I don't know who.

Q. Did you have any orders to deliver them to any particular person?

Q. Yes, I had the address on the letter that Me Hong gave to Nand.

Q. Do you know who that was?

A. Sir? [73—35]

Q. That wasn't C. W. Lung, was it?

A. No, sir.

Q. There wasn't no address, no name on the letter? A. Just—

Q. Were those Chinamen— (interrupted.)

Mr. REGAN.—Had you finished your answer?

A. No name on the letter, but just written 601 East Fourth Street.

Q. You took the letter there and delivered it to the first man that came to the door?

A. I knocked at the door, and a Chinaman came to the door and I gave him the letter.

Q. Who sent this Chinaman from Mexico?

(Testimony of Martin Mendoza.)

A. Nand and Me Hong both.

Q. Nand and Me Hong? A. Yes, sir.

Q. Did they tell you whom they were going to?

A. Told me they were going to 601 East Fourth Street.

Q. They did not mention Lung's name though?

A. No.

Q. What time of day was that?

A. About seven o'clock in the morning.

Q. About seven o'clock in the morning and after that what time of day was it that you saw Lung on that day?

A. About—I saw him about ten o'clock.

Q. About ten o'clock? A. Yes.

Q. Where?

A. About a block and a half from this building East Fourth Street.

Q. Had you remained there at East Fourth Street all day?

A. No, sir, came here to town, around town, and went back there again.

Q. You went back to East Fourth Street again?

A. Yes.

Q. And just happened to run across Lung on the street? A. Yes, right on the corner there.

Q. Was that the first time that you had ever seen him? A. No, sir.

Q. Was that the first time that you had ever seen him on that trip? A. On that trip; yes.

Q. When did you leave Los Angeles on that trip?
[74—36] A. When did I leave?

(Testimony of Martin Mendoza.)

Q. Yes. A. That same day.

Q. Did you get any money? A. Yes.

Q. Who paid you the money?

A. The Chinaman right on 601 East Fourth Street.

Q. The Chinaman paid you? A. Yes, sir.

Q. You did not see any white people around there, or talk to any white people at all, did you?

A. No, sir.

Q. And about what time in the afternoon was it, that you left?

A. Oh, we must have left about, either half-past 12 or 1 o'clock.

Q. And who went with you?

A. Why Noel Mendoza and Burgess.

Q. Burgess knew what you were doing up here, did he? A. Never told him.

Q. He was down there at the house when you got the money that was paid you?

A. Not at the house,—didn't went to the house; he was right on the corner of the block there.

Q. In the machine? A. In the machine.

Q. What did you tell him you were going to do in the house? A. I never told him anything.

Q. Did you go into the house alone?

A. Yes, sir.

Q. Where was Noel? A. On the machine.

Q. Where was Manuel?

A. He was here in town.

Q. He was not with you in the machine?

A. No, sir.

(Testimony of Martin Mendoza.)

Q. You left him up town? A. Yes, sir.

Q. Did you tell Burgess at that time you were going to get any money? A. No, sir.

Q. Then where did you go from there?

A. After I got the money?

Q. Yes, sir.

A. Came here to town and bought them guns.

Q. Went up to Hogee's? A. Yes.

Q. On Main Street, between First and Second and bought those guns? [75—37]

A. On Main Street; I don't know just exactly where.

Q. How do you know these are the two guns?

A. I know them by the numbers.

Q. Did you take the numbers at that time?

A. Yes, sir, I have got the slips of each gun.

Q. Where did you have those slips?

A. I had them in my pocket at the time I was arrested.

Q. You had them still in your pocket at the time you were arrested? A. Yes, sir.

Q. Now, when did you next see Lung after that?

A. After the second trip?

Q. After the second trip, yes, sir.

A. Why, I seen him in the office of Christian, the Commissioner at San Diego.

Q. That was the first time after the second trip you had seen him, wasn't it?

A. The first time I had seen him.

Q. After the second trip, after this time you met him down there near Central Avenue or some place

(Testimony of Martin Mendoza.)

like that? A. Oh, no, I seen him.

Q. That was the first time—but I am trying to explain to you, I want you to understand my question, Mr. Mendoza? A. I see.

Q. After you made the trip and brought three Chinamen to 601 East Fourth Street?

A. Yes, sir.

Q. You saw Lung along about ten or eleven o'clock that day? A. Yes, sir.

Q. Now, when did you see him the next time?

A. The next time I saw him in San Diego.

Q. Where?

A. At the store of Chung Kee's store, Second Street. Second and J Streets.

Q. That is in San Diego?

A. Yes, sir, in Chinatown.

Q. Who was present at that time?

A. Noel. [76—38]

Q. Who else?

A. Just the defendant Noel and I.

Q. Just you three—what time of day was that?

A. Oh, about 8 o'clock in the evening.

Q. And when was that?

A. That was about the 9th I think, about the 9th, the 8th or 9th of November or December.

Q. Then you never saw him again until you all had the pleasure of appearing before my friend, Christian? A. Yes, sir.

Q. In San Diego?

A. Yes, sir; in San Diego.

Q. That was after you were arrested?

(Testimony of Martin Mendoza.)

A. Yes, sir.

Q. Did you know where Lung was at that time?

A. Why, no, I did not.

Mr. REGAN.—What time?

Mr. McKEEBY.—I withdraw the question; that is indefinite that is true.

Q. Now, do you know where Lung was at the time you were arrested of your own personal knowledge?

A. Why, I think he was in San Diego.

Q. You do not know that? A. No.

Q. Did you have any agreement as to where Lung was to meet you?

A. Yes, we had arrangements to meet here, to meet here in Los Angeles; the night I left there he goes to San Diego.

Q. The night you left there?

A. Yes, sir. He left from here to San Diego; I was to run behind.

Q. He went to San Diego? A. Yes, sir.

Q. You couldn't have met him up here, could you?

A. I couldn't have met him up here, no, sir.

Q. Now, when you went to this store, the stalls, I believe you called it of C. W. Lung, those you saw were down on Third Street?

A. As near as—either Third or Second Street, near Alameda, somewhere in there. I couldn't tell; I can get you there though.

Q. Now, where was this platform you speak of?

A. It was in the back end of the building, on the corner; it is [77—39] on the right; I think it is

(Testimony of Martin Mendoza.)

on the right-hand side as you go to the back of the building.

Q. How high a platform was that?

A. Oh, it is about—

Q. That is, how high from the floor?

A. It is about, I should judge it is about 12 or 15 feet; it is just a small, short stairway to go up *to go up*.

Q. And that was in the back of the store, was it?

A. Yes, on the inside of the back of the stall.

Q. Have you ever been to that store or stall since that time? A. No, sir.

Q. Never been there but the one time?

A. That is all.

Q. That I believe you say you were twice there and then went over to Rose Street, and then went back?

A. Yes, that is right; those are the only times.

Q. Those are the only times you were ever there in your life? A. Yes, sir.

Q. And you never saw Lung before in your life?

A. No.

Q. And you never saw him but those three times you have testified to? A. That is all.

Mr. McKEEBY.—I think Mr. Andrews would be entitled to cross-examine if he desired. I think we could save the time of the Court if we could get it all together.

Mr. ANDREWS.—No cross-examination, your Honor, on our part.

Q. (By Mr. McKEEBY.) You never were down

(Testimony of Martin Mendoza.)

to Sixth and Alameda to see Lung, were you?

A. Not to see him; no, sir.

Q. Never saw him down there at all?

A. No, sir.

Mr. McKEEBY.—That is all.

Redirect Examination.

(By Mr. REGAN.)

Q. Is it your recollection, Mr. Mendoza, that you saw—calling your attention to your second trip about the 8th of December [78—40] it is your recollection you saw Lung in San Diego, after you had returned to San Diego from your second trip?

A. Yes, sir.

Q. Before you made your third trip?

A. Yes, sir.

Q. Your recollection is, you saw him in between that time somewhere? A. Yes, sir, I saw him.

Q. And you had seen him just before you made the second trip, hadn't you, to San Diego?

A. Yes, sir.

Mr. REGAN.—That is all.

Recross-examination.

(By Mr. McKEEBY.)

You say you had seen him before you had made the second trip in San Diego, or before you had made the third trip?

Mr. REGAN.—No, he said before he made the second trip.

A. I seen him here in Los Angeles before I made the second trip, my first trip—when I made the sec-

(Testimony of Martin Mendoza.)

ond trip I saw him here and saw him in San Diego also.

Q. And you saw him before you made the second trip in San Diego?

A. No, after I made the second trip.

Q. Before you saw him, before you made the third trip? A. Yes.

Q. Before you met the sheriff when you were arrested? A. Yes.

Q. Well, when you saw him in San Diego?

A. No.

Q. Not before, between the first trip and the trip when you brought the three Chinamen to 601 East Fourth Street?

A. I saw him, yes, after I made the second trip in San Diego also.

Q. You saw him in San Diego, also?

A. Chung Kee's store.

Q. Same place? A. Yes, sir.

Q. Third Street or Second Street?

A. As near as I could see—I couldn't—

Q. How many times did you see Lung?

A. Well, I saw him then after I made the second trip after San Diego.

Q. Take it straight right from the first, please, Mr. Mendoza, and [79—41] see if I have got this right; if I haven't correct me. Go ahead now—you tell it, start right from the very first time you saw and tell us how many times you saw him and where?

A. About the 27th or 28th of November I saw him here in Los Angeles at the stalls at his place and then

(Testimony of Martin Mendoza.)

on the second trip about the 8th of December I saw him on East Fourth, I think East Fourth and Central, if I remember right; I saw him there in the morning, on either the 8th or 9th, somewhere about there, in the morning about 10 o'clock or 11, between 10 or 11 o'clock, and then I saw him again at San Diego about the 11th of December, then the next time I saw him it was when he was before the Commissioner Christian about the 14th or 15th of December after my arrest.

Q. That is the way I got it; I thought Mr. Regan had it wrong there.

The COURT.—I thought he had got in one extra myself.

Q. He did not see him in San Diego between the first and second trip?

The COURT.—Only saw him twice down there, once when he was under arrest. Is that all?

Re-redirect Examination.

(By Mr. REGAN.)

Q. Let me see if I cannot refresh your recollection. Do you remember before making your second trip—do you remember of having any engagement with Mr. Lung down in San Diego which he did not keep? This is before you made the second trip, between the first and second trip?

Mr. McKEEBY.—We object to that, if the Court please, on the ground it is incompetent, irrelevant and immaterial—same old objection. And on the further ground it is leading and suggestive.

(Testimony of Martin Mendoza.)

Mr. REGAN.—It is for the purpose of refreshing the recollection of the witness. I intend to introduce additional evidence along [80—42] the same line.

The COURT.—You can answer the question. The question is immaterial in itself, unless it leads up to something. Do you recollect?

A. After the first trip do you mean?

Q. (By Mr. REGAN.) After the first trip, and before the second trip, in San Diego, before you left San Diego to make your second trip, do you remember of an appointment down there, that he did not keep? A. Oh, yes; we never met him that you—

Q. Now, wait a minute. Do you remember you had an appointment with him down in San Diego just before you made your second trip?

The COURT.—I don't suppose that is very material anyhow.

Mr. REGAN.—I think it is material, if the Court please. We will have additional evidence to show, tending to show, Mr. Lung was in San Diego at that time.

The COURT.—Do you recall?

A. I think it is the 5th of December that I met him in San Diego after the first trip.

Q. You had an appointment with him in San Diego before your second trip, do you remember?

A. I think I did.

Q. Do you remember whether he kept your first appointment or not?

A. I remember after the first trip here, we had an

(Testimony of Martin Mendoza.)

appointment at San Diego.

Q. Now, can you remember—I am speaking about that appointment—can you remember whether he kept it or not on the day of the first appointment?

A. Yes, I think he did, went there and see me—I remember both went and got a drink of beer in the saloon; I think it was after the first trip.

Q. Let's see if I cannot refresh your recollection further. You remember having this appointment with him between the first and second trip in San Diego?

The COURT.—Answer if you can. [81—43]

Q. I say do you remember between the first and second trip or the first trip, about the 27th or 28th, on your second trip about the 8th of December, you remember in between these two dates, having an appointment with Lung in San Diego?

A. Yes, I think we did.

Q. Well, do you remember that he did not keep the appointment on the first time that it was made, or can you? If you can't remember, say so.

A. I can't remember.

Q. And do you remember his keeping it the next day, a day or two before you left on your second trip?

A. I knew he went there, went there after the second trip, yes, sir.

Q. Now, I am talking about the second trip, do you remember whether or not you saw him a day or two before you made your second trip? If you cannot remember, say so.

(Testimony of Martin Mendoza.)

A. I can't very well remember.

Mr. REGAN.—You do not remember, all right; that is all.

Mr. McKEEBY.—No further questions.

Witness excused.

Mr. REGAN.—There is one question I forgot to ask Mendoza, if I might be permitted to ask him.

The COURT.—Very well, you can ask him where he is.

Witness recalled.

Q. (By Mr. REGAN.) One thing I wanted to ask you, Mr. Mendoza, and that was this: Referring to your first trip, about the 28th of November, do you remember who was with you on that trip to Los Angeles, who came up with you? A. Yes, sir.

Q. Who was in the machine?

A. It was a fellow by the name of Ray Nosa.

Q. A Mexican?

Mr. McKEEBY.—What was the name?

A. Henry Ray Rosa.

Q. He was with you on that first trip?

A. Yes, sir.

Recross-examination. [82—44]

(By Mr. McKEEBY.)

Q. Where is he now?

A. I think he is San Diego now.

Q. Ray Nosa? A. Ray Nosa, yes, sir.

Q. He has never been arrested? A. No, sir.

Q. You had a Chinaman with you at that time?

A. We had two Chinamen with us, yes, sir.

Q. He knew all about it? A. Certainly.

(Testimony of William Noel.)

Mr. McKEEBY.—That is all.

Witness excused.

[Testimony of William Noel, for Plaintiff.]

WILLIAM NOEL, witness called in behalf of the United States, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. REGAN.)

Q. State your name in full. A. William Noel.

Q. Where do you live, Mr. Noel, at the present time? A. I am residing in Los Angeles.

Q. How long have you lived in Los Angeles—about how long?

A. I have been living in the hospital since the first of August.

Q. You have been what?

A. I have been living in the hospital since the first of August.

Q. Do you know Martin Mendoza? A. Yes, sir.

Q. And about how long have you known him?

A. I met him in March, 1911.

Q. And you knew him in October and November of 1911? A. Yes, sir.

Q. You knew him in San Diego? A. Yes, sir.

Q. And in about October of 1911, or the first of November, did you have a conversation with him in reference to bringing some [83—45] Chinamen across the line?

A. Had a conversation with him about the middle of October.

Q. Of 1911? A. 1911; yes, sir.

(Testimony of William Noel.)

Q. What was that conversation?

Mr. McKEEBY.—Now, if the Court please, we desire to introduce the same objection to the testimony of this witness, that was introduced to the testimony of the other witness, and I suppose at this time the objection will be overruled, subject to a motion to strike, and our exception will be noted.

The COURT.—Yes, sir. Answer the question.

Q. Just state what the conversation was you had at that time.

Mr. McKEEBY.—It won't be necessary to state all the grounds of our objection?

The COURT.—No.

Mr. McKEEBY.—I don't desire to swell the record here, nor take up the time of the Court.

A. I was traveling on a wheel at that time; I was driving past 8th Street of San Diego and I met Mr. Mendoza, and I stopped and shook hands with him. He asked me what I was doing. I told him I was driving. He said he had a proposition for me, if I wanted to make some money. I asked him what it was, and he told me if I could arrange for an automobile to drive to Los Angeles he could get some Chinamen to carry to Los Angeles. I told him I didn't want to take any chances of getting in any trouble driving Chinamen to Los Angeles. He said I wouldn't get in trouble, because he would see to getting them to San Diego. All I had to do was to drive to Los Angeles. I told him if there was trouble I would agree to go and drive to Los Angeles with the Chinamen, and he said he would make ar-

(Testimony of William Noel.)

rangements to see me later.

Q. Well, now, did you later see him in reference to making trips with the Chinamen?

A. I saw him, I am not sure, whether it was the next day or a [84—46] couple days afterwards.

Q. Did you afterwards see him in November—did you take any trip with him in the last part of November?

A. We made our first trip with him in—it was either the 26th or the 27th, somewhere around there in November.

Q. Did you leave San Diego with him?

A. Yes, sir.

Q. And go down toward the Mexican line, or the International Boundary Line? A. Yes, sir.

Q. And what did you when you got down there?

A. Got down to—I went down to Mendoza's house—

Q. Well, I mean after you left—I don't care about your details about leaving San Diego—but I mean after you left San Diego, went down toward the Mexican line, did you find any Chinamen?

A. There were two Chinamen hid in a lemon orchard down there under the trees.

Q. Who directed you where to go?

A. Mendoza did.

Q. Martin? A. Yes, sir.

Q. Was there anybody there with the Chinamen?

A. There was a Mexican there with them—I don't know who he was.

Q. They were hidden in the lemon trees?

(Testimony of William Noel.)

A. Yes, sir.

Q. That is down across that Otay Mesa, down toward the Mexican Line?

A. Yes, sir; just this side of it.

Q. This was the first trip? A. Yes, sir.

Q. You afterward made a second trip down toward Otay Mesa? A. Yes, sir.

Q. Now, what did you do after you found the Chinamen there with this Mexican?

A. They got him to the machine, and laid him down on the floor and covered him up.

Q. Then what did you do?

A. Started for Los Angeles.

Q. And did you reach Los Angeles?

A. Yes, sir.

Q. About what time? [85—47]

A. We reached Los Angeles three o'clock in the morning.

Q. Where did you go when you reached Los Angeles?

A. We drove up to Chinatown, and everything was dark up there; so then we drove to the Pacific Electric garage, 6th and Los Angeles Street, and stayed there until six o'clock in the morning. We left there six o'clock in the morning and went back to Chinatown, and Mendoza got out of the machine to hunt up Lung.

Q. You mean the defendant here? A. Yes, sir.

Q. C. W. Lung?

A. Yes, sir; he did not know where he was. He had a card with some address down there on, a

(Testimony of William Noel.)

Chinaman, to find out where he was. He came back, and he said he couldn't raise anybody down there, so we drove around a little while, came back again, got off the machine, went down again, and he told me to go up to the Plaza, upon Main Street, and I think came back up there, and told me he found out how to get down to Lung's place at 6th and Alameda Streets.

Q. Did you go down there?

A. Yes, sir; we drove down there.

Q. You went to Lung's place?

A. We went to Lung's place, and we had got out of the machine and walked in the store; I don't know what conversation he had.

Q. Could you see him in the store?

A. I seen him go in the store; I couldn't see him in the store, because I stopped about thirty feet before we got to the store.

Q. Did he come out after that?

A. He came out in about forty-five minutes; Lung came out with him, and told me to drive over to his house.

Q. Lung told you? A. Yes, sir.

Q. Is that the man here, this defendant?

A. Yes, sir.

Q. Then what did you do?

A. We drove there, and drove to his house, drove around to the [86—48] side of the house, the driveway into the back, and two Chinamen got out of the machine, and Lung took them into the house, and told us to go back to the store, and he would

(Testimony of William Noel.)

meet us over there. We drove back to the store, and Lung didn't show up for about an hour, and Mendoza and I waited there until he got back. Mendoza went inside, and I didn't hear the conversation until later on; it was about all over when I went in to find out what was the matter, why he was so long.

Q. When you went in there whom did you see?

A. I seen Lung and Mendoza.

Q. Anybody else?

A. Well, there was some other Chinamen there—I didn't pay any attention to that.

Q. What happened after you got in?

A. They were talking. Mendoza told me—he says we will have to come back.

Mr. McKEEBY.—We object to any conversation unless it was in the presence of this defendant.

Q. Was the defendant present at this time, was Lung present?

A. Yes, he was talking to Mendoza. Mendoza came over to me—he says: I didn't walk up to you because I seen you talking to him. Mendoza seen me coming in the store. He came over and told me we will have to come back after banking hours to get our money. I told him we will have to get some money so we can get some breakfast, and get our machine ready to go back. He went over and got ten dollars from Lung, and we went downtown and had breakfast, got our machine ready to come back to go to San Diego. We went back to Lung's place about 10:30.

(Testimony of William Noel.)

Q. What happened after you got back?

A. Lung paid him \$290.00, the balance.

Q. Then what happened after that?

A. We went back to San Diego.

Q. Did you see Lung pay him \$290.00?

A. Yes, sir.

Q. Now, did you afterwards make another trip with Mendoza? [87—49]

A. Why, I didn't hear the conversation Mendoza had with Lung.

Q. I say, did you make—

A. When at that time after he was in the store?

Q. But I say, after this first trip in November, did you afterwards make a second trip? A. Yes, sir.

Q. With Mendoza? A. Yes, sir.

Q. When did you make the second trip?

A. Made the second trip on the—we left San Diego on the night—I think it was in December, the 7th, if I am not mistaken; it was right around there; anyway it was in the afternoon, about three o'clock in the afternoon.

Q. Between the first trip and the second trip did you see Lung in San Diego? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. About when in reference to the time of your second trip?

A. Just before we made the second trip.

Q. Just before you made the second trip?

A. Yes, sir.

Q. Did you have an appointment there with Mendoza, have an appointment to meet him?

(Testimony of William Noel.)

A. Yes, sir.

Q. Did he keep the appointment?

A. He didn't keep the first appointment. He said he would meet us there on one night, and he didn't show up, and we went back the next night and he was there.

Q. That was a day or two before you made your second trip? A. Yes, sir.

Q. Did you have any talk with him at that time with reference to any Chinamen?

A. We had a talk with him. There was one Chinaman they agreed to put up the money for to bring over from some farm, and that was why he was up there, to find out about this money, and they agreed to not put up the money.

Q. From the Chinese farm?

A. From the Chinaman at the farm. [88—50]

Q. He said there was just one Chinaman there and some opium?

A. He said he would let us know later.

Q. One Chinaman where? A. At Tia Juana.

Q. You have been over at Tia Juana?

A. Yes, sir.

Q. You know Me Hong? A. Yes.

Q. You have been over there with Mendoza?

A. Yes, sir.

Q. You say you made a second trip with Mendoza?

A. Yes, sir.

Q. About the 7th or 9th of December, you don't know which? A. The afternoon of the 7th.

Q. In making the trip you left San Diego, of

(Testimony of William Noel.)

course? A. Yes, sir.

Q. With whom?

A. With Martin Mendoza and Manuel and myself, and the three Chinamen.

Q. Well, I know, but before you got the Chinamen, I mean. You left the city of San Diego to get the Chinamen? A. Yes, sir.

Q. And went down toward the Mexican line?

A. Yes, sir.

Q. On that Otay Mesa there? A. Yes, sir.

Q. And what did you find?

A. Three Chinamen.

Q. And who directed you to find them?

A. Manuel was in the machine, and I don't remember whether Manuel or Martin directed.

Q. Do you remember the condition of Martin's foot that day?

A. He had an ingrowing toenail; he was in very bad condition; he couldn't walk.

Q. You found three Chinamen? A. Yes, sir.

Q. What did you do with them?

A. Took them and put them in the machine and started for Los Angeles about three o'clock in the afternoon.

Q. Which way did you go?

A. Took the Inland Road.

Q. Did you go through Temecula? A. Yes, sir.

Q. How were the Chinamen dressed?

A. Two of them were dressed as women.

Q. How was the third one dressed? [89—51]

A. The third woman was not dressed at all—he

(Testimony of William Noel.)

had his old clothes on lying on the floor.

Q. Why didn't you dress him up as a woman?

A. He had a queue, and we did not want him sitting up in the machine.

Q. Pig-tail? A. Yes.

Q. What happened at Temecula, if anything?

A. About a mile and a half north of Temecula we speeded in a mud puddle and ran into a ditch and broke the left back wheel.

Q. Now, after the accident what did you do with the Chinamen?

A. Why, the accident happened about four o'clock, and Manuel got out of the machine with the three Chinamen and took them down to the willows—a little creek runs along there, and I never seen Manuel any more until about seven o'clock that evening. We had lunch there. I went to Temecula at six o'clock, telephoned for another wheel and—

Q. Did another wheel come?

A. Another wheel got there about 11:30 that night.

Q. Who brought it? A. Mr. Walling.

Q. Mr. Walling? A. Yes, sir.

Q. Is he the man you hired the machine from?

A. Yes, sir.

Q. For the first trip? A. Yes, sir.

Q. Paid him for the first trip? A. Yes, sir.

Q. How much? A. Seventy-five dollars.

Q. After you had made repairs at Temecula, did you come on to Los Angeles?

A. Yes, sir; left Temecula at a quarter to twelve that night.

(Testimony of William Noel.)

Q. What time did you get to Los Angeles?

A. We got to Los Angeles about seven o'clock on the morning of the eighth.

Q. Where did you go?

A. Went to Fourth and Central.

Q. To Fourth and Central?

A. Yes, sir. [90—52]

Q. Well, what happened after you got to Fourth and Central?

A. Martin told me to stop at Fourth and Central and he would go and see about where to deliver the Chinamen.

Q. Where were you going to deliver the Chinamen? A. 601 East 4th.

Q. Did you deliver them there? A. Yes, sir.

Q. Drove them up in the machine?

A. Drove them up to the side of the house; the Chinamen got out of the machine and he drove them in the back door.

Q. What did you do after you delivered the Chinamen there?

A. After we delivered the Chinamen, Mendoza came to me, and he says, we would have to go up in Chinatown, and hunt up somebody that was to receive the Chinamen, and we followed up,—I drove up the Plaza. Mendoza went down to Chinatown, and he finally came back and told me he found the man; he said he was out there at the corner of the Plaza and Los Angeles, and I drove down there, got the Chinamen in the machine and drove back to Fourth and Central. The Chinamen got out of the

(Testimony of William Noel.)

machine, and the Chinamen went up to 601, I suppose—I didn't see where they went. Mendoza came back later and told me we would have to come back for the money at eleven o'clock; so I says, "All right."

Q. Did you come back at eleven o'clock?

A. We came back at eleven o'clock.

Q. Now, before you came back at eleven o'clock, that is, after you delivered the Chinamen, and before you came back at eleven o'clock, did you see Lung up there?

A. After we delivered the Chinamen we was there at Fourth and Central, as we started off we met Lung.

Q. Did you have any conversation with Lung?

A. Lung asked us—looked in the machine, and asked us what we had. We told him we didn't have anything for him; and we asked him, Mendoza and Martin, if he had received his letter, and Martin said no; Lung said he wrote a letter to Martin and also one [91—53] to Me Hong, and Martin said, "I guess I will get the letter when I get back"; so Lung said he had one Chinaman and 150 cans of opium at Tia Juana, and he wanted us to bring them right through; so we agreed to come right back with him.

Q. Did you mention any time as to when you would probably be back with them?

A. I told him we would be back on the following Monday or Tuesday.

Q. After leaving Lung there did you go to—you went back to the house, 601, and told him?

(Testimony of William Noel.)

A. No, we went downtown and had our machine fixed up first, ready to go back.

Q. Is that the trip you met Burgess on?

A. Yes, sir.

Q. Was Burgess with you when you met Lung?

A. No, sir.

Q. Where did you meet Burgess?

A. We drove up to Jeffries' saloon and washed up our face and hands and cleaned up a bit, then we went and had breakfast. While at Jeffries' saloon, why we met Burgess; I had known Burgess for a number of years when I was here before.

Q. He joined you, did he?

A. He joined us there.

Q. Was he with you when you went back to the house about eleven o'clock? A. Yes, sir.

Q. At that time what happened with reference to the money?

A. At the time we drove down Fourth and Central about eleven o'clock with Martin, Manuel, Burgess and myself in the machine, and Martin got out and went up to 601, I presume,—I don't know where he went—and while he was gone I was doing a little fixing around with the machine, ready to go back; he came back in about ten minutes, and I asked him if he had the money, and he said everything was all right; he had it so we went downtown and bought those guns at that time.

Q. Those guns that you see here? A. Yes, sir.

Q. United States Exhibits 2 and 3? [92—54]

A. Bought them at Hoegee's that afternoon before

(Testimony of William Noel.)

we went back to San Diego.

Q. Burgess was with you?

A. Well, Burgess and Manuel were in the machine.

Q. Well, I mean they were with you in the machine with you at that time? A. Yes, sir.

Q. Then what did you do with reference to going to San Diego?

A. Then we went back to San Diego. On the way back we was going back the Coast road, but the Chinamen had lost a Chinese Dictionary while they were there, when we broke down and we went back to find this Chinese Dictionary. That is the reason we went on the Inland road.

Q. At Temecula?

A. Yes, sir; we got back to Temecula that night and looked for it but could not find it.

Q. You did not find it?

A. We did not find it, no, sir; so we went back to San Diego.

Q. Now when did you get back to San Diego, about when?

A. Maybe around 7 or 8 o'clock somewhere around there.

Q. That would be about the 8th or 9th you got back to San Diego? A. On the night of the 8th.

Q. Did you afterwards make a third trip with Martin? A. Yes, sir.

Q. Oh, yes, after the second trip you went to the garage, didn't you?

A. Went to the Premier Garage.

Q. Buy some supplies there?

(Testimony of William Noel.)

A. Bought some oil and gasoline.

Q. Was anything the matter with the machine?

A. I had a leak in my gasoline pipe and I wanted to get it fixed. They didn't have time to fix it or it would have been too much trouble and I told them to give me some soap and I would soap the leak myself temporarily.

Q. Did you have some conversation with one of the men there at the garage; did he make some remark?
[93—55]

A. One man asked me—the machine was all dusty—he says, “You look like you had been out in the country.” I said, “Yes, we are going again.” I don't remember where I told him, whether I told him where we were going or not.

Q. Now, with reference to this third trip, who was with you on this third trip?

A. That we were arrested?

Q. Yes, who left San Diego with you?

A. Martin.

Q. To go and get the Chinamen? A. Yes, sir.

Q. Who directed you where to get the Chinamen?

A. We both knew where to go, Martin had told me.

Q. You say, who told you? A. Martin told me.

Q. Had Martin been down to Tia Juana before that?

A. Yes, sir, had been there that afternoon.

Q. That same day? A. That afternoon.

Q. And you left San Diego and went down towards the International line, down on the Otay Mesa?

A. Yes, sir.

(Testimony of William Noel.)

Q. About what time did you find the Chinamen, or get to where the Chinamen were?

A. About 8 or 9 o'clock in the evening.

Q. When was this? A. The night of the 12th.

Q. The night of the 12th of December, 1911?

A. Yes, sir.

Q. You and Martin? A. Yes, sir.

Q. And what day of the week was that, do you remember? A. Tuesday night.

Q. And you found the Chinamen there?

A. Yes, sir.

Q. And what did you do?

A. The Chinamen got in the machine, and we started back to San Diego, or for Los Angeles.

Q. By what route? A. The Coast road.

Q. By the Coast road? A. Yes, sir.

Q. Now, prior to that, had you had some conversation with Martin about his going down and getting these Chinamen over?

A. Martin told me that he would attend to getting him over. [94—56]

Q. He had told you that before you went down and got this Chinaman? A. Yes, sir.

Q. Now you started for Los Angeles, about what time?

A. About 9 o'clock Tuesday evening.

Q. And you were arrested about that time?

A. About 1 o'clock in the morning, on Wednesday morning, the 13th.

Q. Do you know who arrested you?

A. Jones is the only man that I know; there was

(Testimony of William Noel.)

five of them all together.

Q. And where did this arrest happen?

A. Just about five miles south of San Juan Capistrano.

Q. You were taken back where?

A. Taken back to Capistrano, telephoned there, and left there about 3 o'clock in the morning and went back to San Diego.

Q. The Chinaman was there, this Chin Sing?

A. Yes, sir.

Q. You say you paid \$75.00 to Mr. Walling on your first trip? A. Yes, sir.

Q. Did you pay him anything on the second trip?

A. \$50.00.

Q. Did you make any arrangements about buying a machine?

A. I made arrangements. I asked him what arrangements he could make with me for buying a machine, and he asked me how much I could pay down, and I asked him what he wanted, and I told him that I would give him \$500.00 down, and the balance in about ninety days. The machine was to cost us \$1800.00, if I am not mistaken, I am not sure.

Q. Did you pay him any money?

A. We paid him \$300.00 down.

Q. Who paid him that? A. Mendoza.

Q. Got a receipt? A. Yes, sir.

Q. Showing you United States Exhibit 4, I will ask you if that is the receipt he gave Mendoza.

A. Yes, sir.

Mr. REGAN.—I think that is all for direct exam-

(Testimony of William Noel.)

ination. If I have overlooked anything I shall ask permission to ask a question or [95—57] two in reference to it.

Cross-examination.

(By Mr. ANDREWS.)

Q. Mr. Noel, as a matter of fact, you have never had any agreement, have you, with Mr. Lung?

A. Not myself, personally, no, sir.

Q. The conversations that you related were with Mr. Martin Mendoza, were they not? A. Yes, sir.

Q. Mr. Lung never promised you personally any money for anything, did he?

A. No, sir, I never had any conversation with Mr. Lung myself, at all.

Q. Do you recall when you and Mr. Mendoza went down to Sixth Street, the market of the Chinaman?

A. Yes, sir.

Q. When was that? A. The first trip.

Q. Yes?

A. It was on or about November 26th or 27th.

Q. You found some stalls there? A. Yes.

Q. Can you describe the stalls to the jury?

A. Well, there is a market there, there are stalls, and some kind of short strips run right straight through, and the stalls are all boarded, but the stalls open on both ends off of Sixth Street and back to a square place, a big lot there on the back; you can look right through stalls from one street to another. I never paid much attention to the rest of them. We drove right where Lung's sign was, great big wire in

(Testimony of William Noel.)

front of the place, and I stopped just before we got to it, about thirty feet from it.

Q. Did you make a trip down there to Second and Rose Streets? A. Third and Rose.

Q. Third and Rose? A. Yes, sir.

Q. What is that place?

A. Why it is a little cottage right on the corner.
[96—58]

Q. Do you remember the number, Mr. Noel?

A. No, I don't, three hundred and something, if I am not mistaken. I do not remember what the number was.

Q. Which trip was that? A. First trip.

Q. Who was present at that time?

A. When we went to the house?

Q. Yes.

A. There was Martin Mendoza, myself and the Mexican that was with us—I don't know what his name was; I never seen him before, and Mr. Lung.

Q. Did you go over there to the market in the machine? A. Yes, sir.

Q. And Mr. Lung with you? A. No, sir.

Q. What did he do?

A. We left him there at the house; he told us to meet him at the market and we drove back to the market, and wait for him.

Q. How did you go from the market to the house?

A. Drove the machine.

Q. Who was with you?

A. Mendoza and myself and two Chinamen and the Mexican.

(Testimony of William Noel.)

Q. Mr. Lung was not with you at that time?

A. No, sir; he said he would meet us there.

Q. When you went over to the market—you have stated, have you not Mr. Noel, Mr. Lung stayed at the house at Third and Rose, when you all went there to the market?

A. We left him at the house; we went to the back door with the Chinamen.

Q. And went out the front?

A. We turned around in the back yard and went out the front. He told us to meet him at the market.

Q. Did you wait for him until he came.

A. We waited for him at the market until he came.

Q. He came after you arrived? A. Yes, sir.

Q. That is you arrived first? A. Yes, sir.

Q. In what direction did he approach you? [97—59]

A. I don't know because I did not go inside. Mr. Mendoza went in.

Q. You had no conversation inside with Mr. Lung?

A. No, sir.

Q. Now, what did you do on your second trip in Los Angeles? A. You mean when I got here?

Q. Yes.

A. We stopped at Fourth and Central and Martin told me—he said he would go and see about delivering the Chinamen.

Q. But you did not see where he went to, did you?

A. I didn't see where he went to, no.

Q. So, so far as you know, you cannot state to the jury, just what he actually did?

(Testimony of William Noel.)

A. I don't know what he did or where he went; all I know is, where he came back and directed me to go.

Q. Do you remember how long an interval it was between the time he left you, and when he got back to Third and Central?

A. Probably about fifteen minutes to half an hour.

Q. About half an hour?

A. I wouldn't say for sure.

Q. This was on the 8th day of December?

A. Yes, sir; the morning of the 8th at seven o'clock.

Q. What time in the morning?

A. About seven o'clock.

Q. And the Chinaman was still in the machine?

A. Yes, sir.

Q. What was done with the Chinaman after that?

A. He came back and told me to drive to 601 East Fourth Street, and I drove up there. He told me to drive in at the side of the house towards the back door, and I drove in there; the Chinaman got out and walked in the back door.

Q. That was about 9 o'clock?

A. Oh no, that was just about 7:30.

Q. That was about 7:30?

A. Yes, sir; in the morning.

Q. On the 8th day of December?

A. December, 1911.

Q. You know the neighborhood there, do you not, pretty well?

A. Well, no not—I can't say that I do.

(Testimony of William Noel.)

Q. You remember there is a fire engine house there on the corner? [98—60] A. Yes, sir.

Q. Right across from this 601 East Fourth?

A. Yes, sir.

Q. Whom did you see when you got there?

A. There was a fireman standing out in front of the engine house.

Q. Whom did you see at 601 East Fourth?

A. I didn't see anybody.

Q. Did you deliver the Chinaman, Mr. Noel?

A. I drove the machine, that is all.

Q. Did the Chinaman go in alone, or did somebody go with him?

A. Why, Mendoza was standing there, and told him where to go in the door.

Q. In the back door? A. Yes, sir.

Cross-examination.

(By Mr. McKEEBY.)

Q. Now, Mr. Noel, when you first arrived in the city, on your first trip, that was the 26th or the 27th of November? Did you go directly to the market?

A. No, sir.

Q. You went where? A. Went into Chinatown.

Q. And where did *you in* Chinatown?

A. Why, I drove right straight up Alameda Street, and Mendoza got out at Marchessault Street.

Q. Do you know where he went?

A. I don't know where he went.

Q. Then, if I remember correctly, you said you went back to the Pacific Electric Garage?

(Testimony of William Noel.)

A. Yes, sir; it was so dark, and we couldn't get in anywhere there.

Q. Then you went back to Chinatown again?

A. Yes, sir.

Q. About what time?

A. Oh, a little after six in the morning, along about 6:30.

Q. And where did you stop that trip?

A. Well, I didn't stop; Mendoza got off at Chinatown again and I went north on Main Street—I don't know how far north I went—I drove up and came back. [99—61]

Q. Had the Chinaman in the auto all the while?

A. Yes.

Q. What time did you meet Mendoza when you came back? A. It was about fifteen minutes.

Q. Then where did you go?

A. He said he couldn't raise anybody.

Q. Oh, that was the second time—that was after six o'clock, I am speaking of, when you drove north on Main Street, and he got off and went into Chinatown, and came back, and said he couldn't raise anybody.

A. Yes, he got off the first time and said he couldn't raise anybody; came back and got in the machine, and we drove around town and went back again about seven o'clock.

Q. About seven o'clock?

A. He got off. He told me, he says, "You go up and wait at the Plaza; it won't do to drive it around here too much," so I went up to the Plaza, and waited

(Testimony of William Noel.)

right in front of the picture show on Main Street.

Q. How long did he wait there?

A. Probably half an hour.

Q. Making it about eight o'clock?

A. About eight o'clock.

Q. Then where did you go?

A. Martin came up, and he told me, he says—no, no, he came back and got in the machine on Alameda Street; it was after we had delivered the Chinamen that I met him and waited.

Q. That was the second time he came back was it—what did you do after you, after he came back, took the Chinaman down the third time, I think it was, you went in there early in the morning?

A. He told me to go to Sixth and Alameda Street.

Q. You didn't go to the market on Second or Third Street, did you, and Alameda?

A. No, I don't think we went in the market there.

Q. You never went there and delivered any—

A. Not to Third Street—I don't know whether it is Third or Sixth; it is Sixth Street where the market is; there is no [100—62] market on Third Street.

Q. Then you went to the market on Sixth and Alameda? A. Yes, sir.

Q. And there you saw C. W. Lung, did you?

A. Yes, sir.

Q. Did you know him? A. No, sir.

Q. Did Martin know him? A. No, sir.

Q. How did you know whom you were after?

A. Why, Martin went out, or got out of the machine, and went inside; he was in there about forty-

(Testimony of William Noel.)

five minutes, and he came out with Lung.

Q. Then what happened?

A. And Lung said he did not know where to take him out of the machine, and finally agreed to go over to his house at Third and Rose Street. He told me to drive over there and he would walk over; and we drove over, and drove around to the back door.

Q. He was at the back door by the time you got there? A. Yes, sir.

Q. And he walked there?

A. He cut through; there is a little gangway that goes through there from Market.

Q. Did you know where Third and Rose was at that time? A. Yes, sir; I did.

Q. You had driven in this city, had you?

A. I drove here for three years.

Q. And for whom? A. For Harry Burke.

Q. For Harry Burke? A. Yes, sir.

Q. And then you went to San Diego?

A. Yes, sir.

Q. Were you driving in the rent service in San Diego? A. Yes, sir.

Q. You are a married man are you?

A. Yes, sir.

Q. Where does your wife reside?

Mr. REGAN.—That is objected to as incompetent, irrelevant and immaterial.

The COURT.—Probably it is; he may answer.

A. Well, I don't know that it is—it is a family affair, and I [101—63] don't know that it is necessary.

(Testimony of William Noel.)

Q. Well, that doesn't answer the question.

Mr. REGAN.—I don't know what it involves; if the Court can conceive of its being material—

The COURT.—Unless there is some materiality about it, he needn't answer the question.

Mr. McKEEBY.—I will withdraw it, with the privilege later on of recalling it.

The COURT.—Very well.

Q. Now, when you came up on your second trip, Mr. Noel, you had broken down right near Temecula?

A. Yes, sir.

Q. What did you do with the Chinese?

A. Manuel took the Chinese and went to the willows with them.

Q. Just kept them there in the willows, did he?

A. I don't know; after he left the machine I didn't pay any attention to him, because I was looking out, getting the machine ready to get on the way again.

Q. Where was Martin?

A. Martin was there with me, and helping me.

Q. He stayed right with you all the time, did he?

A. Yes, sir.

Q. You had some little lunch there that evening, didn't you? A. Yes, sir.

Q. Where did you have that lunch?

A. Well, I went to Temecula at six o'clock to telephone, and while I was there I bought lunch for all of us, and we sat right there in the machine, built a fire, and had our lunch.

Q. Manuel brought—

A. Brought the chinks to the barn, in the rear of

(Testimony of William Noel.)

the house, the farm-house, and after we got through all eating he took what was left back to the Chinamen.

Q. The Chinese were not with you there at the time you had your lunch? A. No, sir. [102—64]

Q. Now, after you took the Chinese over to Third and Rose Streets on the first trip, you went back to the market, did you? A. Yes, sir.

Q. And how long—was Lung there when you got there? A. No.

Q. How long before he got back there?

A. Well, it must have been forty-five minutes, pretty near an hour. Mendoza came out, and he said he hadn't got back.

Q. Who came out and said he hadn't got back?

A. Martin.

Q. Did you go into the store with him?

A. Martin went back in the store; in about fifteen minutes I went in.

Q. Where were you sitting all this time?

A. We was sitting about fifty feet east of his store on the opposite side of the street.

Q. You could see everybody that went in and out?

A. Yes, sir.

Q. And had he gone in when you went in?

A. I didn't see him.

Q. Was he there when you got there?

A. Yes, sir.

Q. Now who else was present in that store?

A. There was three or four Chinamen working around there, in and out of the store, and his book-

(Testimony of William Noel.)

keeper, stenographer—I don't know who she was.

Q. Young lady? A. Yes, sir.

Q. She was there at that time? A. Yes, sir.

Q. Was she there when you made your first trip there. A. Yes, sir.

Q. You saw her at that time, too?

A. The first trip?

Q. That is, I mean early in the morning before you went over to Rose Street.

A. I didn't see her; I wasn't in the store.

Q. You didn't see her when you first went there, and this all occurred on the first trip?

A. Yes, sir; all occurred on the first trip.

Mr. McKEEBY.—There are certain other questions I don't desire to go into at the present time on cross-examination with this witness—a line of examination I would prefer to go into after [103—65] adjournment. When I take it up, it will take some little time—if I do take it up.

(Whereupon court adjourned to Tuesday, 10:30 A. M.)

(Court convened on Tuesday, 10:30 A. M., November 26, 1911.)

(Defendants Lung and Daly in court with counsel.)

Mr. McKEEBY.—We will stipulate that the jury is present, your Honor.

The COURT.—Call the next witness, gentlemen.

Mr. REGAN.—I did not ask Mr. Noel with reference to his having entered a plea of guilty in this indictment No. 464. I will state from a personal

(Testimony of Martin Mendoza.)

examination of the records that it shows that Mr. Noel did enter his plea of guilty under this indictment No. 464.

Mr. McKEEBY.—We will stipulate on Mr. Regan's say-so that Mr. Noel did enter a plea of guilty in this particular indictment.

Mr. ANDREWS.—We will stipulate the same, your Honor, for the defendant Daly.

The COURT.—Very well.

Mr. REGAN.—Call Mr. Meyers.

Mr. McKEEBY.—There were one or two questions I wanted to ask Noel.

The COURT.—Very well.

Mr. REGAN.—Call Mr. Noel, then, for further cross-examination.

Mr. McKEEBY.—I would like first to call Mr. Mendoza for about two questions, your Honor.

The COURT.—Well, send word, then, so there will be no delay. Tell all three of these witnesses to come in. Their presence will not be material.

**[Testimony of Martin Mendoza, for Plaintiff
(Recalled).]**

MARTIN MENDOZA recalled.

Cross-examination.

(By Mr. McKEEBY.)

Q. Mr. Mendoza, do you know this man here? Stand up, there. A. I don't think I do.

Q. Did you ever see him before? A. No, sir.

Mr. McKEEBY.—That is all.

(Testimony of William Noel.)

Mr. REGAN.—No questions.

The COURT.—Call the next witness.

(Witness excused.) [104—66]

**[Testimony of William Noel, for Plaintiff
(Recalled).]**

WILLIAM NOEL recalled.

Cross-examination.

(By Mr. McKEEBY.)

Q. Mr. Noel, do you know—stand up, there—do you know that man? A. I cannot place him.

Q. Did you ever see him before?

A. I couldn't say whether I ever did or not.

Q. That you know of?

A. I can't say whether I ever seen him.

Mr. McKEEBY.—That is all.

The COURT.—Call the next witness.

Mr. McKEEBY.—That was all with him.

Q. Now, Mr. Noel, when you went down there to get the money on Sixth Street, you testified that you had already—you met Lung there?

Mr. REGAN.—Just fix the date, Mr. McKeeby.

Mr. McKEEBY.—Why, on the second trip—it was the 7th or 8th of December, I believe he has testified—

Mr. REGAN.—I am referring to the second trip when you went to 601 East Fourth—that was the 7th or 8th of December, was it?

A. Tuesday morning, of the 8th of December.

Q. Who was with you when Lung came along there in the car?

(Testimony of William Noel.)

A. Martin Mendoza and Manuel.

Q. Nobody else? A. No, sir; myself.

Q. And Burgess was in with you at that time?

A. No, sir.

Q. I understood you to say the other day that Martin or Martin Mendoza had left you and that Burgess was there in the car with you.

Mr. REGAN.—That question is objected to as very uncertain and indefinite.

A. At what time?

Q. At the time they went back to get the money, about eleven o'clock on the morning of the 8th of December?

A. It was before we went back to get the money.

[105—67]

Q. It was before?

Mr. REGAN.—What was before?

A. That we seen Lung.

Q. (By Mr. McKEEBY.) What time in the morning was it that you saw Lung?

A. It must have been about eight or nine o'clock.

Q. You went up to Jeffries' place? A. Yes, sir.

Q. Jeffries' saloon on Spring Street?

A. Yes, sir.

Q. Between Third and Fourth? A. Yes, sir.

Q. On the east side of the street? A. Yes, sir.

Q. And you there met Burgess? A. Yes.

Q. He got into the car with you?

A. Not at that time, no, sir.

Q. When did he get into the car with you?

A. He got in the car about eleven o'clock.

(Testimony of William Noel.)

Q. And did you tell him where you were going?

A. Told *him* *was* going to San Diego.

Q. Did you go back to 601 East Fourth Street?

A. I went to Fourth and Central.

Q. To Fourth and Central, and Burgess went with you? A. Yes, sir.

Q. Did you tell him what you were stopping there for? A. No, sir; I did not.

Q. Did you ever tell him what you have done?

A. No, sir.

Q. Did you tell him what you came up from San Diego to do? A. No, sir.

Q. Did you give him any of the money you collected? A. No, sir.

Mr. McKEEBY.—That is all.

Mr. REGAN.—That is all.

The COURT.—Call your next witness.

(Witness excused.)

Mr. REGAN.—I think Mr. Noel and Mr. Mendoza had better remain in the courtroom for the purpose of identification only. Any time that you want them to retire, make your suggestion.

Mr. McKEEBY.—We would like possibly to recall Mr. Noel for [106—68] further cross-examination later on.

[Testimony of Martin Mendoza, for Plaintiff (Recalled).]

MARTIN MENDOZA recalled.

Direct Examination.

(By Mr. REGAN.)

Q. Mr. Mendoza, referring to the time when you

(Testimony of Martin Mendoza.)

made the first trip and delivered the Chinaman at Lung's house, do you remember the time I have reference to? A. Yes, sir.

Q. That was in November, 1911? A. Yes, sir.

Q. When you reached Lung's house who got out of the machine in reference to you and Noel?

A. I did.

Q. Noel stayed in the machine? A. Yes.

Q. You *did* the Chinamen get out of the machine?

A. Why, I got—

Q. That is as to whether they took their time or they hurried?

A. Oh, they were in a hurry, of course.

Q. What did they do with reference to getting out?

A. Jumped right off and ran in the back end of the house.

Q. Had the machine stopped at the time they jumped out?

A. They wasn't to a quite full stop yet.

Mr. REGAN.—That is all.

Mr. REDD.—No questions.

(Witness excused.) [107—69]

[Testimony of James F. Meyers, for Plaintiff.]

JAMES F. MEYERS, witness called on behalf of the United States, having been first duly sworn, testified as follows:

My name is James F. Meyers. I reside at 1045 W. 7th Street, in the City of Los Angeles, State of California. I am in the automobile business at 1212 S. Olive Street, in the City of Los Angeles. I re-

(Testimony of James F. Meyers.)

member seeing Mr. Noel and Mr. Mendoza on December 8th, 1911. They came to the garage where I was working and wanted some gasoline and oil which I sold them. There was a third man in the car at the time. The sale was made on December 8th, 1911. The car was all covered with dirt and grease and I made the remark, "You fellows must have been out in the country somewheres." They laughed and I think Noel said, "We have been out in the country"; that is all. They both appeared covered with dust like anybody would taking a long journey. One of them had a piece cut out of his shoe here (indicating). I suppose his foot must have been lame.

[Testimony of Horace A. Walling for Plaintiff.]

HORACE A. WALLING, witness called on behalf of the United States, having been first duly sworn testified as follows:

My name is Horace A. Walling. I reside in San Diego part of the time and part of the time in Los Angeles, California. I resided in San Diego in November and December, 1911, and at that time was engaged in the automobile business. I am acquainted with Martin Mendoza and Wm. Noel. I remember the occasion about November 28th, 1911, in which Noel hired an automobile from me at which time he made a trip and paid me the rent for the machine, which amounted to \$50.00 or \$75.00, I don't know which. He made two trips. I do not remember the exact length of time he had the machine on the first trip. It was figured out at the rate of \$4.00

(Testimony of Horace A. Walling.)

per hour. After the first trip, I had a conversation with Noel in reference to buying a car. Mr. Martin Mendoza was present [108—70] and they arranged to buy a car for the sum of \$1,500.00. They did not make any payment at that time but later paid me the sum of \$300.00 on the purchase price. On the night of December 7th or 8th I got a telephone message from Temecula that they had broken a wheel and for me to bring one out to them which I did and delivered it to them at Temecula, and then came back to San Diego. At the time I rented the car to Mr. Noel for the first trip a Mr. De Paul, whom I am well acquainted with, brought him to the garage and stood sponsor for the hire of the car on the first trip. Mr. Noel had been driving private cars there in San Diego as chauffeur for different people. I let him have a Schat car, which was the same one which he later contracted to purchase.

[Testimony of Chas. Escallier, for Plaintiff.]

CHAS. ESCALLIER, witness called on behalf of the United States, having been first duly sworn, testified as follows:

My name is Chas. Escallier and I reside at Temecula, State of California. I remember seeing Mr. Noel and Mr. Mendoza near Temecula in December, 1911. They were in an automobile about two miles beyond Temecula. I saw another Mexican and one sitting in an automobile and two others down below. The other two I spoke of were dressed as women. They sent me back to Temecula to have the garage-man there come up. These two persons who were

(Testimony of Chas. Escallier.)

dressed as women were about thirty or forty yards from me when I saw them. I never was any closer than that and could not tell whether they were Mexicans or what nationality they were. This was about four o'clock in the afternoon.

[Testimony of Fred H. Burgess, for Plaintiff.]

FRED H. BURGESS, witness called on behalf of the United States, having been first duly sworn, testified as follows:

My name is Fred H. Burgess and I reside at 718 W. Third Street, in the City of Los Angeles, State of California. In December, 1911, I resided at 771 Mill Street, in said city. I am acquainted [109—71] with Wm. Noel and Martin Mendoza. Have known Martin Mendoza since about December 5th, 1911. I first met them at Jeffries' saloon, in the City of Los Angeles; that was in the morning; later I met them again about 11:30 at the same place and got in an automobile with them and went from Los Angeles to San Diego. Before leaving Los Angeles we drove around town and stopped at different places, went to Jeffries' saloon, also Harper and Reynolds' Hardware store, and to Hogue's arms store, where Noel and Mendoza each purchased a revolver. They then drove around and finally stopped at Fourth Street and Central Ave. Mendoza got out of the machine and went southwest and was gone for about a half or three-quarters of an hour. When he came back he got into the machine and we all proceeded to San Diego. I stayed all night with Noel and did not see Mendoza until the next day. (Witness shown re-

(Testimony of A. G. Barnard.)

volvers marked Exhibit 1 and 2, and he testified that they resembled the ones purchased at Hogue's arms store in the City of Los Angeles.)

[Testimony of A. G. Barnard, for Plaintiff.]

A. G. BARNARD, witness called on behalf of the United States, having been first duly sworn, testified as follows:

My name is A. G. Barnard. I reside at Bakersfield, Kern Co., California, and by occupation am Immigrant Inspector in the employment of the Government and was in such employ in December of last year. I am the official who arrested the defendant C. W. Lung, which arrest took place in San Diego, California, at about the hour of 8:10 of the morning of December 14th, 1911. (Witness shown two railroad tickets purchased from the Atchison, Topeka and Santa Fe Railroad Company for transportation from Los Angeles to San Diego and return offered in evidence by the Government and stipulated by the attorneys for respective parties that the same were purchased by the defendant C. W. Lung concerning which witness testified.) I took this ticket showing date of [110—72] purchase December 12, 1911, the validating stamp December 14, 1911, from the possession of the defendant C. W. Lung when I made the arrest. (The other ticket in evidence shows that it was purchased on December 5th, 1911, bearing validating stamp of December 7th, 1911, San Diego, California.)

[Testimony of Gus P. Jones, for Plaintiff.]

GUS P. JONES, witness called on behalf of the United States, having been first duly sworn, testified as follows:

My name is Gus P. Jones and I reside in the City of San Diego, State of California. By occupation I am a United States Immigrant Inspector and was such in December, 1911. I am acquainted with Martin Mendoza and Wm. Noel and was present on the occasion of their arrest on the 13th day of December, 1911; they were arrested at a place known as Point San Juan on the Coast road about halfway between Los Angeles and San Diego. On the occasion of their arrest they were going in the direction of Los Angeles. This occurred about the hour of 1:30 A. M., I should judge. Myself and Inspector Allison were together at the time. We were looking for these defendants Noel and Mendoza. We had been watching at that certain place for three nights. They had made one trip before this, which was about the 7th of the month or about a week before their arrest. I saw them on that trip going north towards Los Angeles, but was not looking for them on that occasion. I was at that time stationed at Elsinore and was called from Elsinore over to Fall Brook. On the night of their arrest about December 13, 1911, we were out watching for this outfit. I had the number of the car and their names and also a description of the car. About 1 or 1:30 I saw a light of a machine coming about three miles down the road. We camped on the beach and I placed a lantern in the

(Testimony of Gus P. Jones.)

middle of the road right at the top of the grade and wrapped a red bandana handkerchief around it. It was tolerable steep there so they slowed down with their machine. I [111—73] asked whose machine it was and Mr. Noel said it belonged to Mr. Walling in San Diego. I told him we were looking for that machine. In the machine we found the Chinaman and 12 cans of opium. The Chinaman was covered over with blankets and the opium piled in the tool-box. (Witness was shown Exhibit 3, constituting card with signature of T. J. Jones on the back thereof and testified as follows:) That is my signature. I put it there the day of the arrest in San Diego. I think the card was taken from Mr. Noel, but I am not sure. I put my name on it at the time. (Witness is shown Exhibit 1 and 2, constituting the revolvers introduced in evidence, and identified as the ones taken from Noel and Mendoza at the time of their arrest.)

[Testimony of Mrs. Mary Gillman, for Plaintiff.]

Mrs. MARY GILLMAN, a witness being called in behalf of the United States, after being first duly sworn, testified as follows:

It was stipulated by counsel that Chin Sing, mentioned in the last overt act in the indictment herein, was at all times mentioned in the said indictment a Chinese laborer and was tried before United States Commissioner H. T. Christian in the City of San Diego, County of San Diego, and was adjudged to be a Chinese laborer unlawfully within the country and ordered deported by reason thereof.

(Testimony of Mrs. Mary Gillman.)

Direct Examination.

(By Mr. REGAN.)

Q. What is your full name, Mrs. Gillman?

A. Mary Gillman.

Q. Where do you live? A. 220 Rose Street.

Q. How long have you lived there, Mrs. Gillman?

A. Almost thirty-one years.

Q. Do you remember where Mr. Lung's house was in November and December of the year 1911?

A. Yes, sir.

Q. Was it near your house? A. Yes, sir.

Q. How near was it?

A. Well, it was ten or fifteen feet distant. [112—74]

Q. Now, do you remember in the fall of 1911, an automobile coming into Mr. Lung's place?

A. Yes, sir; I do.

Q. Now, how long before Christmas was that?

A. Well, it was before Thanksgiving—before the holidays, as near as I can remember.

Q. Before the holiday season? A. Yes, sir.

Q. Did you see this automobile come into Mr. Lung's place? A. Yes, sir, I did.

Q. Did you see any men there in the automobile?

A. Yes, two men were in the automobile.

Q. What kind of looking men were they?

A. Well, they were both pretty stout men—heavy-set men, both of them.

Q. Were they what you would call Americans?

A. Well, one seemed to be light and the other was a dark one.

(Testimony of Mrs. Mary Gillman.)

Q. One of them looked like an American?

A. I think so.

Q. And when they came in there, you saw them in the automobile, did you—when they came into Lung's place? A. Yes, sir.

Q. And then you went around to the other side of the house?

A. I was in at the window—I couldn't help seeing them. I was at the window and saw them come in with the automobile, and then I went back.

Q. Then you went around where you could get a better view? A. Yes, sir.

Q. And when you next saw the automobile, it had just stopped? A. Yes, sir.

Q. Now, what did you next see?

A. I saw one of these two men get out of the automobile.

Q. You saw one of these men get out of the machine?

A. Yes, sir; just jumped from the machine,—one of the men.

Q. And where did the other stay?

A. Why, he stayed on the seat, right on the front seat of the automobile. [113—75]

Cross-examination.

(By Mr. McKEEBY.)

Q. How long did you watch that machine, Mrs. Gillman?

A. Oh, I don't know,—about five minutes.

Q. Did you see the machine go away?

A. Yes, I saw it back up and go out.

(Testimony of Mrs. Mary Gillman.)

Q. And you saw it when it first stopped, did you?

A. Yes, sir.

Q. Did you see anyone get out of it besides this one man? A. No, sir.

Q. You couldn't say how long they were there, could you? A. No, sir.

Q. Who lives next door to Lung's?

A. Well, I couldn't see that from my house.

Q. Which side do you live on—the south side or the north side of Lung's?

A. On the north side of Lung's.

Q. Well, where does this Mr. J. W. Kees live?

A. Well, I live in between the two.

Q. You live between the two? A. Yes, sir.

Q. Now, you own the house there? A. Yes.

Q. You have rented to the Chinese there for a good many years, haven't you?

A. No, I don't own that house. I own the house where I am living in.

Q. You own the house where you are living?

A. Yes, sir.

Q. Well, the Chinese live there on both sides of you, and have been there for a great number of years, haven't they? A. Yes, sir.

Q. Now, did you ever see any automobile go into Kee's yard? A. Only his own.

Q. Now, was anyone else going there, do you know?

A. When they have parties visiting, that is all.

Q. That is all that you have ever seen—you have seen automobiles stop at Lung's house?

(Testimony of Mrs. Mary Gillman.)

A. Just once.

Q. Besides this time? A. No, only the one time.

Q. Well, now what kind of an automobile was that? A. It was a [114—76] big black one.

Q. And now, did you watch that from the time it went in there until it drove out again?

A. Well, I couldn't help but watch it—it was a strange thing to see an automobile go in there when no one was in the house hardly.

Q. And you watched the machine from the time it went in there until it drove away?

A. Well, I went back and I could see it from my porch, and I thought that probably—that maybe there was a bride in that automobile.

Q. Well, you watched it from the time it went in there until it left? A. Yes, sir.

Q. And you didn't see anyone get out except this one man, who was sitting on the front seat?

A. It wasn't the man who was sitting on the front seat that got out—he was the man who was sitting there.

Q. Well, you did see a man get out?

A. Yes, sir.

Q. And you only saw one man get out of the automobile? A. Yes, sir.

Q. And you saw the automobile back out and go away? A. I did.

Redirect Examination.

(By Mr. REGAN.)

Q. From the time you first saw the machine, where were you standing?

(Testimony of Mrs. Mary Gillman.)

A. Why, I was in my bedroom, at the window.

Q. Well, where did you go from there?

A. Well, I went to the shed.

Q. So you must have lost sight of the machine for a short time? A. Yes, just while it drove in.

Q. You lost sight of it for a few minutes?

Q. (By Mr. McKEEBY.) You lost sight of the machine?

A. Well, I saw it drive in, and by the time I got back to the shed—

Q. But you did lose sight of the machine for a short time? A. Yes, sir.

Q. When did you see it stop—did it have its back towards you, with the hood on?

A. Yes, sir. [115—77]

Q. Have the top up? A. Yes, sir.

Q. You could see on both sides of it?

A. Yes, sir; I could see if anyone got out.

Q. You could have seen anyone get out of the machine? A. Yes, sir.

Q. You saw the machine stop?

A. Yes, sir; it was stopped by the time I got down to the shed.

Q. You could see everything around there?

A. Yes, there was only one man got out of the machine.

Q. You could have seen them if there had been anyone else get out of the machine?

A. Well, I was there, and of course I didn't see anyone else, but just the one man get out of the machine.

(Testimony of Mrs. Mary Gillman.)

Q. (By Mr. REGAN.) You got there just as the machine stopped? A. Yes, sir.

Q. You don't know whether anyone got out before it stopped or not?

A. Well, they would have to get out before it stopped.

Q. But you don't know whether they did or not?

A. I don't know.

Q. You lost sight of the machine?

A. Well, they would have to jump out while the machine was driving around, if they got out.

Q. You could see from your window?

A. Yes, sir, and then I went back to the shed.

Q. (By Mr. McKEEBY.) How long, Mrs. Gillman, from the time you first saw the machine until you saw it the second time?

A. Well, not more than five minutes, hardly.

Q. Five minutes?

A. Yes, sir; I didn't give it such very close account.

Q. And you went right straight from your bedroom window right back? A. Yes, sir.

Q. How far from your bedroom window there is it back to the shed? A. Oh, maybe ten feet.

Q. Well, then for about ten feet you were out of sight of the machine—while the machine was going about ten feet? A. Yes. [116—78]

Q. (By Mr. REGAN.) Could you see into the back door?

A. No, I could see only part of the back porch—not to the door—not when I stood there—I couldn't

(Testimony of Mrs. Mary Gillman.)

see only to the back porch.

Q. You couldn't see into the door?

A. No, I couldn't see into the doorway.

(Witness excused.)

Mr. REGAN.—That is the Government's case.

Mr. McKEEBY.—I would like to introduce these witnesses out of order; most of them are very busy men in the market.

The COURT.—Very well.

Mr. McKEEBY.—I will call Mrs. Smith.

[Testimony of C. W. Lung, for Defendant.]

C. W. LUNG, called as a witness on behalf of himself as defendant, testified on cross-examination.

Page 21 of my cash-book shows that on November 27, 1911, I was charged with having drawn \$350.00. I may have drawn it—I can't remember—I think I did. I do not know what it was for.

The foregoing is a statement of all the proof made and evidence adduced on the part of the Government and the proceedings had upon the hearing and trial of this action before me, Frank R. Rudkin, sitting as Judge in the United States District Court of the Southern District, Southern Division of California, on the trial of said action before said Court and a jury, said defendant C. W. Lung and his said counsel being present at all the proceedings herein mentioned.

The defendant, C. W. Lung, within the time allowed by law, files this as his Bill of Exceptions, and asks that same be settled and allowed.

Dated this April 8th, 1913.

McKEEBY & REDD,
Attorneys for Defendant. [117—79]

The foregoing Bill of Exceptions is correct and may be settled and allowed.

Dated this April 10th, 1913.

A. I. McCORMICK,
United States District Attorney.
EDWARD A. REGAN,
Assistant United States District Attorney.

Order [Settling and Allowing Bill of Exceptions].

The foregoing Bill of Exceptions is correct and is hereby settled and allowed.

Dated this April 16th, 1913.

FRANK R. RUDKIN,
Judge.

[Endorsed]: Original. No. 464—Crim. In the United States District Court in and for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. C. W. Lung, Martin Mendoza, Manuel Mendoza, L. W. Noel, Me Hong, Joaquin Nand and Arthur Daly, Defendants. Bill of Exceptions. Filed Apr. 19, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Received copy of the within this day of, 19..., Attorneys for McKeeby & Redd, Suite 616 California Building. Telephones: Main 2389, Home F 1596, Los Angeles, Cal., Attorneys for C. W. Lung. [118—80]

**[Order Extending Time to File Bill of Exceptions
and Fixing Bail Pending Appeal.]**

At a stated term, to wit, the January Term, A. D. 1913, of the District Court of the United States of America in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the City of Los Angeles, California, on Wednesday, the 15th day of January, in the year of our Lord, one thousand nine hundred and thirteen. Present: Honorable OLIN WELLBORN, District Judge.

No. 464—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

C. W. LUNG et al.,

Defendants.

Edward A. Regan, Esq., Assistant U. S. Attorney, appearing as counsel for the Government, George L. McKeeby, Esq., appearing as counsel for defendant C. W. Lung; now, on motion of counsel for defendant C. W. Lung, it is ordered that the time of said defendant C. W. Lung within which he may file a bill of exceptions, and also the stay of exceptions heretofore granted said defendant Lung, be, and they hereby are extended from January 18th, 1913, to January 28th, 1913, and it is further ordered that the bail of said defendant Lung, pending appeal, be, and the same hereby is fixed at \$2,500.00. [119]

[Bond to Appear.]

United States of America,
Southern District of California,—ss.

BE IT REMEMBERED, that on this 22d day of January, in the year of our Lord one thousand nine hundred and thirteen, before me, E. H. Owen, a Commissioner duly appointed by the District Court of the United States for the Southern District of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress, in that behalf, personally appeared C. W. Lung, as principal, and Geo. L. McKeeby, and Cora E. Colby, as sureties, and jointly and severally acknowledged themselves to be indebted to the United States of America, in the sum of twenty-five hundred (\$2,500) Dollars, separately to be levied and made out of their respective goods and chattels, lands and tenements, to the use of the said United States.

The condition of the above recognizance is such, that, whereas, an indictment has been found by the Grand Jury of the United States for the Southern District of California, and filed on the 8th day of March, A. D. 1912, in the District Court of the United States, for said Southern District of California, charging the said C. W. Lung with the violation of Sec. 37 of Federal Penal Code of 1910 (conspiracy to smuggle Chinese laborers into the United States), committed on or about the first day of October, A. D.

1911, to wit, at the District aforesaid, contrary to the form of the statute of the United States, in such case made and provided;

AND WHEREAS, the said C. W. Lung was in said court on the 27th day of November, A. D. 1912, by the jury selected and sworn to try the said cause, duly found guilty of said offense and whereas the Judge of said Court, on the 13th day of December, 1912, upon the said indictment and said verdict of said [120] jury finding the said C. W. Lung guilty of the said offense as charged in said indictment, did in open court, in the presence and hearing of said C. W. Lung and his counsel, duly pronounce and render sentence in a judgment against the said C. W. Lung that he be imprisoned and confined in the United States Penitentiary at McNeil Island, State of Washington, for a term of one (1) year and one (1) day, and whereas the said C. W. Lung has been required to give recognizance with sureties in the sum of Twenty-five hundred (\$2500) Dollars for his appearance,

Now, Therefore, if the said C. W. Lung, shall personally appear at the District Court of the United States for the Southern District of California, to be holden at the courtroom of said Court, in the City of Los Angeles, whenever or wherever he may be required to answer the said indictment and all matters and things that may be objected against him whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises and not depart the said Court without leave first obtained, and having now been convicted

and judgment having been rendered against him as above shall render himself to the United States Marshal for the Southern District of California, before the expiration of the period of time embraced in any stay of execution granted or that may be granted in said cause or any extension thereof in execution of said judgment, then this recognizance shall be void, otherwise to remain in full effect and virtue.

C. W. LUNG. [Seal]

GEO. L. McKEEBY. [Seal]

CORA E. COLBY. [Seal]

Acknowledged before me the day and year first above written.

[Seal]

E. H. OWEN,

United States Commissioner, Southern District of California.

Southern District of California,—ss.

Geo. L. McKeeby and Cora E. Colby, being duly sworn, each for himself deposes and says that he is [121] a householder in said District, and is worth the sum of Twenty-five Hundred Dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

GEO. L. McKEEBY.

CORA E. COLBY.

Subscribed and sworn to before me, this 22d day of January, A. D. 1913.

[Seal]

E. H. OWEN,

United States Commissioner.

The form of the foregoing Bond and the sufficiency

of the sureties thereto is hereby approved.

E. H. OWEN,
U. S. Commissioner.

[Endorsed]: No. 464—Crim. United States District Court, Southern District of California. The United States of America vs. C. W. Lung. Bond to Appear. On Appeal to Circuit Court of Appeals. In the sum of \$2500.00. With Geo. L. McKeeby and Cora E. Colby as Sureties. Filed Jan. 22, 1913, at min. past o'clock M. Wm. M. Van Dyke, Clerk. By E. H. Owen, Deputy. [122]

In the District Court of the United States of America, in and for the Southern District of California, Southern Division.

Case No. 464—CRIM.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. W. LUNG et al.,

Defendants.

Petition for Writ of Error.

Comes now C. W. Lung, one of the defendants herein, and says: That on or about the 27th day of November, 1912, a jury in the above-entitled court found this defendant guilty as charged in the above-entitled action, and in the trial of said case and the proceedings had thereunto certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the Assign-

ment of Errors which is filed with this petition.

WHEREFORE, this defendant prays that a Writ of Error may issue in his behalf to the United States Circuit Court of Appeals for the Ninth Circuit for the correction of errors so complained of, and that a transcript of the record proceedings and papers in this cause duly authenticated may be sent to the said Circuit Court of Appeals.

McKEEBY & REDD,
Attorneys for Defendant.

[Endorsed]: Original. No. 464—Crim. In the United States District Court in and for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. C. W. Lung et al. Defendant. Petition for Writ of Error. Filed January 28, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. Received copy of the within this day of, 191... .., Attorneys for McKeeby & Redd, Suite 616 California Building. Telephones: Main 2389, Home F 1596, Los Angeles, Cal., Attorneys for Defendant. [123]

*In the District Court of the United States, Southern
District of California, Southern Division.*

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

C. W. LUNG et al.,
Defendants.

Assignment of Errors.

The defendant, C. W. Lung, in connection with his petition for a writ of errors makes the following assignment of errors which he avers occurred upon the trial of this cause; to wit:

I.

The Court erred in admitting the evidence of the alleged co-conspirator Martin Mendoza over the objection of the attorneys for the defendant.

(a) The conspiracy not having been proven by competent evidence.

(b) No competent evidence other than the evidence of the said alleged co-conspirators having been offered to prove the connection of the defendant, C. W. Lung, with said alleged conspiracy.

(c) No concert of action having been shown between the several defendants, charged, and C. W. Lung.

(d) It being a narrative of past events after a consummation of the alleged conspiracy made by an alleged co-conspirator.

II.

The Court erred in denying the motion of defendant, C. W. Lung, to strike out all of the testimony of said witness Martin Mendoza for the same reason set forth in the first assignment of error herein and for the further reason:

(a) That said testimony was not connected by competent evidence.

(b) That no conspiracy was proven by competent evidence. [124]

(c) That the connection of the defendant, C. W. Lung, with said alleged conspiracy was not proven by competent evidence.

III.

The Court erred in refusing to grant defendant's motion for instruction to the jury to acquit the defendant, C. W. Lung.

(a) No competent evidence having been introduced to prove the alleged conspiracy.

(b) No competent evidence having been introduced to prove the connection of defendant, C. W. Lung, to the alleged conspiracy.

(c) No concert of action having been shown between the several defendants charged and C. W. Lung.

(d) Insufficient evidence to sustain a verdict.

IV.

The Court erred in admitting the evidence of the alleged co-conspirator, Wm. Noel, over the objection of the attorneys for the defendant.

(a) The conspiracy not having been proven by competent evidence.

(b) No competent evidence other than the evidence of the said alleged co-conspirators having been offered to prove the connection of the defendant, C. W. Lung, with said alleged conspiracy.

(c) No concert of action having been shown between the several defendants and C. W. Lung.

(d) It being a narrative of past events after a consummation of the alleged conspiracy made by an alleged co-conspirator.

V.

The Court erred in denying the motion of defendant, C. W. Lung, to strike out all of the testimony of said witness, Wm. Noel, for the same reason set forth in the first assignment of error herein and for the further reason:

(a) That said testimony was not connected by competent evidence. [125]

(b) That no conspiracy was proven by competent evidence.

(c) That the connection of the defendant, C. W. Lung, with said alleged conspiracy was not proven by competent evidence.

VI.

The Court erred in admitting the testimony of the witness James F. Meyers over the objection of the defendant, C. W. Lung.

(a) No competent evidence having been introduced to show the connection of defendant Lung with the alleged conspiracy.

(b) Not a part of any overt act.

(c) Irrelevant, incompetent and immaterial.

VII.

The Court erred in admitting the testimony of the witness Horace A. Walling over the objection of the defendant, C. W. Lung.

(a) No competent evidence having been introduced to show the connection of defendant Lung with the alleged conspiracy.

(b) Not a part of any overt act.

(c) Irrelevant, incompetent and immaterial.

VIII.

The Court erred in admitting the testimony of the witness Chas. S. Escallier over the objection of the defendant, C. W. Lung.

(a) No competent evidence having been introduced to show the connection of defendant Lung with the alleged conspiracy.

(b) Not a part of any overt act.

(c) Irrelevant, incompetent and immaterial.

IX.

The Court erred in admitting the testimony of the witness Fred H. Burgess over the objection of the defendant, C. W. Lung.

(a) No competent evidence having been introduced to show [126] the connection of defendant Lung with the alleged conspiracy.

(b) Not a part of any *over* act.

(c) Irrelevant, incompetent and immaterial.

X.

The Court erred in admitting the testimony of the witness G. Bernard over the objection of the defendant, C. W. Lung.

(a) No competent evidence having been introduced to show the connection of defendant Lung with the alleged conspiracy.

(b) Not a part of any overt act.

(c) Irrelevant, incompetent and immaterial.

XI.

The Court erred in admitting the testimony of the witness Emile Christopher over the objection of the defendant, C. W. Lung.

(a) No competent evidence having been intro-

duced to show the connection of defendant Lung with the alleged conspiracy.

(b) Not a part of any overt act.

(c) Irrelevant, incompetent and immaterial.

XII.

The Court erred in admitting the testimony of the witness, Gus P. Jones, over the objection of the defendant, C. W. Lung.

(a) No competent evidence having been introduced to show the connection of defendant Lung with the alleged conspiracy.

(b) Not a part of any overt act.

(c) Irrelevant, incompetent and immaterial.

XIII.

The Court erred in admitting the testimony of the witness Mary Elida Hamlin, over the objection of the defendant, C. W. Lung.

(a) No competent evidence having been introduced to show [127] the connection of defendant Lung with the alleged conspiracy.

(b) Not a part of any overt act.

(c) Irrelevant, incompetent and immaterial.

XIV.

The Court erred in admitting the testimony of the witness Mrs. Mary Gillman, over the objection of the defendant, C. W. Lung.

(a) No competent evidence having been introduced to show the connection of defendant Lung with the alleged conspiracy.

(b) Not a part of any overt act.

(c) Irrelevant, incompetent and immaterial.

XV.

The Court erred in admitting the testimony of the witness Mr. Miller, over the objection of the defendant, C. W. Lung.

(a) No competent evidence having been introduced to show the connection of defendant Lung with the alleged conspiracy.

(b) Not a part of any overt act.

(c) Irrelevant, incompetent and immaterial.

XVI.

The Court erred in admitting the testimony of the witness Cassius L. Keep, over the objection of the defendant, C. W. Lung.

(a) No competent evidence having been introduced to show the connection of defendant Lung with the alleged conspiracy.

(b) Not a part of any overt act.

(c) Irrelevant, incompetent and immaterial.

XVII.

The Court erred in not granting defendant's motion to strike out the testimony of the witness James F. Meyers.

(a) No competent testimony having been introduced to prove the connection of said C. W. Lung with the alleged conspiracy.

(b) Not a part of the overt act.

(c) Incompetent, irrelevant and immaterial.

(d) No connection shown between defendant C. W. Lung and [128] and witnesses Martin Mendoza and Wm. Noel who are also charged as defendants.

XVIII.

The Court erred in not granting defendant's motion to strike out the testimony of the witness Horace A. Walling.

(a) No competent testimony having been introduced to prove the connection of said C. W. Lung with the alleged conspiracy.

(b) Not a part of the overt act.

(c) Incompetent, irrelevant and immaterial.

(d) No connection shown between defendant C. W. Lung and witnesses Martin Mendoza and Wm. Noel who are also charged as defendants.

XIX.

The Court erred in not granting defendant's motion to strike out the testimony of the witness Chas. S. Escallier.

(a) No competent testimony having been introduced to prove the connection of said C. W. Lung with the alleged conspiracy.

(b) Not a part of the overt act.

(c) Incompetent, irrelevant and immaterial.

(d) No connection shown between defendant C. W. Lung and witnesses Martin Mendoza and Wm. Noel who are also charged as defendants.

XX.

The Court erred in not granting defendant's motion to strike out the testimony of the witness Fred H. Burgess.

(a) No competent testimony having been introduced to prove the connection of said C. W. Lung with the alleged conspiracy.

(b) Not a part of the overt act.

(c) Incompetent, irrelevant and immaterial.

(d) No connection shown between defendant C. W. Lung and witnesses Martin Mendoza and Wm. Noel who are also charged as defendants. [129]

XXI.

The Court erred in not granting defendant's motion to strike out the testimony of the witness G. Bernard.

(a) No competent testimony having been introduced to prove the connection of said C. W. Lung with the alleged conspiracy.

(b) Not a part of the overt act.

(c) Incompetent, irrelevant and immaterial.

(d) No connection shown between defendant C. W. Lung and witnesses Martin Mendoza and Wm. Noel, who are also charged as defendants.

XXII.

The Court erred in not granting defendant's motion to strike out the testimony of the witness Emile Christopher.

(a) No competent testimony having been introduced to prove the connection of said C. W. Lung with the alleged conspiracy.

(b) Not a part of the overt act.

(c) Incompetent, irrelevant and immaterial.

(d) No connection shown between defendant C. W. Lung and witnesses Martin Mendoza and Wm. Noel who are also charged as defendants.

XXIII.

The Court erred in not granting defendant's motion to strike out the testimony of the witness Gus P. Jones.

(a) No competent testimony having been introduced to prove the connection of said C. W. Lung with the alleged conspiracy.

(b) Not a part of the overt act.

(c) Incompetent, irrelevant and immaterial.

(d) No connection shown between defendant C. W. Lung and witnesses Martin Mendoza and Wm. Noel who are also charged as defendants.

XXIV.

The Court erred in not granting defendant's motion to [130] strike out the testimony of the witness Mary Elida Hamlin.

(a) No competent testimony having been introduced to prove the connection of said C. W. Lung with the alleged conspiracy.

(b) Not a part of the overt act.

(c) Incompetent, irrelevant and immaterial.

(d) No connection shown between defendant C. W. Lung and witnesses Martin Mendoza and Wm. Noel who are also charged as defendants.

XXV.

The Court erred in not granting defendant's motion to strike out the testimony of the witness Mrs. Mary Gillman.

(a) No competent testimony having been introduced to prove the connection of said C. W. Lung with the alleged conspiracy.

(b) Not a part of the overt act.

(c) Incompetent, irrelevant and immaterial.

(d) No connection shown between defendant C. W. Lung and *witness* Martin Mendoza and Wm. Noel who are also charged as defendants.

XXVI.

The Court erred in not granting defendant's motion to strike out the testimony of the witness Mr. Miller.

(a) No competent testimony having been introduced to prove the connection of said C. W. Lung with the alleged conspiracy.

(b) Not a part of the overt act.

(c) Incompetent, irrelevant and immaterial.

(d) No connection shown between defendant C. W. Lung and witnesses Martin Mendoza and Wm. Noel who are also charged as defendants.

XXVII.

The Court erred in not granting defendant's motion to strike out the testimony of the witness Cassius L. Keep.

(a) No competent testimony having been introduced to prove the connection of said C. W. Lung with the alleged conspiracy. [131]

(b) Not a part of the overt act.

(c) Incompetent, irrelevant and immaterial.

(d) No connection shown between defendant C. W. Lung and witnesses Martin Mendoza and Wm. Noel who are also charged as defendants.

XXVIII.

The Court erred in denying defendant's motion for new trial.

(a) Court erred in decision of questions of law arising during the course of the trial.

(b) The verdict is contrary to law.

(c) The verdict is contrary to the evidence.

(d) The verdict is contrary to law and the evidence.

(e) The evidence is insufficient to justify the verdict.

McKEEBY & REDD,
Attorneys for Defendant, C. W. Lung.

[Endorsed]: Original. No. 464—Crim. In the United States District Court in and for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. C. W. Lung et al., Defendants. Assignment of Errors. Filed January 28, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. Received copy of the within this 28 day of Jan., 1913. A. I. McCormick, Edward A. Regan, Attorneys for Pltff. McKeeby & Redd, Suite 616 California Building. Telephones: Main 2389, Home F 1596, Los Angeles, Cal., Attorneys for Defendant. [132]

Praeipce [for Transcript of Record.]
UNITED STATES OF AMERICA.

District Court of the United States, Southern District of California, Southern Division.

Clerk's Office.

No. 464—CRIM.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. W. LUNG, MARTIN MENDOZA, MANUEL MENDOZA, ME HONG, JOAQUIN NAND, and ARTHUR DALY,

To the Clerk of said Court:

Sir: Please issue a certified copy of the record in the above-entitled case, upon the Writ of Error sued out by defendant C. W. Lung, said record consisting of the Indictment, Bench Warrant, Demurrer of Defendant C. W. Lung, Motion of Defendant C. W. Lung to Quash Indictment, Order of Court Denying Motion to Quash and Overruling Demurrer, Entry of Plea of Defendant C. W. Lung, Minutes of the Trial, Verdict, Motion for New Trial, Motion in Arrest of Judgment, Order of Court Denying Motion in Arrest of Judgment and Motion for New Trial, Judgment and Sentence, Bill of Exceptions, Order Fixing Bail of Said Defendant Lung Pending Appeal, Bond to Appear, Petition for Writ of Error, Assignment of Errors, and this Praecipe, said record to be annexed to the Writ of Error and the Citation, and to be certified under the hand of the Clerk and the Seal of the Court.

McKEEBY & REDD,
Attorneys for Defendant C. W. Lung. [133]

[Endorsed]: No. 464—Crim. U. S. District Court, Southern District of California, Southern Division. United States of America, Plaintiff, vs. C. W. Lung, Martin Mendoza, Manuel Mendoza, Me Hong, Joaquin Nand and Arthur Daly, Defendants. Praecipe for copy of Record. Filed Jul. 17, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [134]

[Certificate of Clerk U. S. District Court to Transcript of Record.]

In the District Court of the United States of America, in and for the Southern District of California, Southern Division.

No. 464—CRIM.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

C. W. LUNG, MARTIN MENDOZA, MANUEL
MENDOZA, L. W. NOEL, ME HONG,
JOAQUIN NAND, and ARTHUR DALY,
Defendants.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing one hundred and thirty-four typewritten pages, numbered from 1 to 134, inclusive, and comprised in one volume, to be a full, true and correct copy of the Indictment, Bench Warrant, Demurrer of Defendant C. W. Lung to the Indictment, Motion of Defendant C. W. Lung to Quash Indictment, Order of Court Denying Motion to Quash and Overruling Demurrer, Entry of Plea of Defendant C. W. Lung, Minutes of the Court upon the Trial of said Defendant C. W. Lung, Verdict, Motion for New Trial, Motion in Arrest of Judgment, Order of Court Denying Motion in Arrest of Judgment and Motion for New Trial, Judgment and Sentence, Bill of Exceptions, Order Fixing Bail of said Defendant Lung

Pending Appeal, Bond to Appear, Petition for Writ of Error, Assignment of Errors and Praecipe for Record in the above-entitled cause, and that the same, together, constitute the record in said cause upon the Writ of Error to the United States District Court for the Southern District of California, Southern Division, sued out by said Defendant C. W. Lung, as specified in the Praecipe filed in my office on behalf of the said defendant by his attorneys of record.

[135]

I do further certify that the cost of the foregoing record is \$74.40, the amount whereof has been paid me on behalf of said Defendant C. W. Lung by Messrs. McKeeby & Redd, his attorneys.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America in and for the Southern District of California, Southern Division, this 19th day of July, in the year of our Lord one thousand nine hundred and thirteen, and of the Independence of the United States, the one hundred and thirty-eighth.

[Seal]

WM. M. VAN DYKE,

Clerk of the District Court of the United States in
and for the Southern District of California.

[136]

[Endorsed]: No. 2312. United States Circuit Court of Appeals for the Ninth Circuit. C. W. Lung, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District

Court of the Southern District of California, Southern Division.

Received August 28, 1913.

F. D. MONCKTON,
Clerk.

Filed August 29, 1913.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

**[Order Enlarging Time to March 31, 1913, to File
Record in Appellate Court.]**

*In the United States Circuit Court of Appeals, Ninth
Judicial Circuit.*

C. W. LUNG et al.,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendants in Error.

Good cause appearing therefor, it is hereby ordered, that the time heretofore allowed said plaintiffs in error to docket said cause and file the record thereof with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby enlarged and extended to and including the 31st day of March, 1913.

Dated at Los Angeles, February 20th, 1913.

OLIN WELLBORN,
United States District Judge, for the Southern District of California.

[Endorsed]: No. —. United States Circuit Court of Appeals for the Ninth Circuit. C. W. Lung et al., Plaintiffs in Error, vs. The United States of America, Defendants in Error. Order Extending Time to File Record. Filed Feb. 24, 1913. F. D. Monckton, Clerk.

**[Order Enlarging Time to June 1, 1913, to File
Record in Appellate Court.]**

*In the United States Circuit Court of Appeals, Ninth
Judicial Circuit.*

C. W. LUNG et al.,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendants in Error.

Good cause appearing therefor, it is hereby ordered, that the time heretofore allowed said plaintiffs in error to docket said cause and file the record thereof with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby enlarged and extended to and including the 1st day of June, 1913.

Dated at Los Angeles, March 27th, 1913.

OLIN WELLBORN,
United States District Judge, for the Southern District of California.

[Endorsed]: No. —. United States Circuit Court of Appeals for the Ninth Circuit. C. W. Lung et al., Plaintiffs in Error, vs. The United States of America, Defendants in Error. Order Extending Time to File Record. Filed Mar. 29, 1913. F. D. Monckton, Clerk.

**[Order Enlarging Time to August 1, 1913, to File
Record in Appellate Court.]**

*In the United States Circuit Court of Appeals, Ninth
Judicial Circuit.*

C. W. LUNG et al.,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendants in Error.

Good cause appearing therefor, it is hereby ordered that the time heretofore allowed said plaintiffs in error to docket said cause and file the record thereof with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby enlarged and extended to and including the 1st day of August, 1913.

Dated at Los Angeles, May 31st, 1913.

OLIN WELLBORN,

United States District Judge.

[Endorsed]: No. —. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to August 1, 1913, to File Record Thereof and to Docket Case. Filed Jun. 3, 1913. F. D. Monckton, Clerk.

**[Order Enlarging Time to September 1, 1913, to File
Record in Appellate Court.]**

*In the United States Circuit Court of Appeals, Ninth
Judicial Circuit.*

C. W. LUNG et al.,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendants in Error.

Good cause appearing therefor, it is hereby ordered that the time heretofore allowed said plaintiffs in error to docket said cause and file the record thereof with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby enlarged and extended to and including the 1st day of September, 1913.

Dated at Los Angeles, July 24, 1913.

OLIN WELLBORN,

United States District Judge.

[Endorsed]: No. —. United States Circuit Court of Appeals for the Ninth Circuit. C. W. Lung et al., Plaintiffs in Error, vs. The United States of America, Defendant in Error. Order Extending Time to File Record. Filed Jul. 26, 1913.

No. 2312. United States Circuit Court of Appeals for the Ninth Circuit. Four Orders Under Rule 16 Enlarging Time to September 1, 1913 to File Record thereof and to Docket Case. Re-filed Aug. 29, 1913. F. D. Monckton, Clerk.

10

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

C. W. Lung,		<i>Plaintiff in Error,</i>
		<i>vs.</i>
United States of America,		<i>Defendant in Error.</i>

}

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

On the 8th day of March, 1912, the United States grand jury for the Southern District of California, Southern Division, returned a true bill of indictment against C. W. Lung [Tr. pages 6 to 10 inc.], Manuel Mendoza, Martin Mendoza, L. W. Noel, Me Hong, Joaquin Nand and Arthur Daly, for a violation of Sec. 37, Federal Penal Code, 1910, (conspiracy to smuggle Chinese laborers), and on said true bill of indictment a bench warrant [Tr. page 11] was issued, directed to the marshal of the United States for the Southern District of California, and his deputies, and either of them, commanding them to apprehend and bring before the court at the United States District Court room, in the city and county of Los Angeles, the said defendants.

Thereafter, defendant Lung was duly arraigned before said District Court, and gave his true name as C. W. Lung.

Thereafter, on the 1st day of April, 1912, said C. W. Lung served upon the United States attorney for the Southern District of California his demurrer to said indictment and motion to quash said indictment. [Tr. pages 17 to 18, inc.]

Thereafter, on Nov. 22nd, 1912, said cause was called for trial before the Hon. Frank R. Rudkin, and said trial was continued from day to day to and including the 27th day of November, 1912, when the jury returned its verdict of "guilty" against the said defendant, C. W. Lung. [Tr. pages 18 to 32, inc.]

Thereafter, on the 9th day of December, 1912, defendant served upon the United States attorney for the Southern District of California his motion for a new trial, and motion in arrest of judgment. [Tr. pages 33 to 35, inc.]

Thereafter, on the 13th day of December, 1912, both the motion in arrest of judgment and for a new trial were denied by the Hon. Frank R. Rudkin, district judge, and thereupon said judge proceeded to sentence C. W. Lung to be imprisoned in the United States penitentiary at McNeil Island, state of Washington, for the term of one year and one day. [Tr. pages 36 to 37, inc.]

Thereafter, on the 28th day of January, 1913, said defendant C. W. Lung sued out his writ of error [Tr. pages 1, 2 and 3, inc.] to this Honorable Court, and citation was thereupon issued. [Tr. pages 4 and 5, inc.]

Thereafter, on the 28th day of January, 1913, said defendant, C. W. Lung, served and filed his assignment of errors.

Thereafter, on the 16th day of April, Hon. Frank R. Rudkin allowed the bill of exceptions [Tr. pages 38 to 138, inc.] of plaintiff in error, C. W. Lung.

BRIEF.

ARGUMENT, POINTS AND AUTHORITIES.

The defendant C. W. Lung assigns twenty-eight main errors committed by the court in the trial of said case, and in each of the twenty-eight assignments of error there are from three to four particular assignments set out in sub-headings.

The first three assignments of error cover the testimony of the co-conspirators, Martin Mendoza and Wm. Noel, and are as follows:

I.

The court erred in admitting the evidence of the alleged co-conspirator, Martin Mendoza, over the objection of the attorneys for the defendant.

a. The conspiracy not having been proven by competent evidence.

b. No competent evidence other than that of the alleged co-conspirators having been offered to prove the connection of the defendant, C. W. Lung, with the alleged conspiracy.

c. No concert of action having been shown between the several defendants charged, and C. W. Lung.

d. It being a narrative of past events, after the commission of the alleged conspiracy, made by an alleged co-conspirator.

II.

The court erred in denying the motion of defendant, C. W. Lung, to strike out all of the testimony of said witnesses Martin Mendoza and Wm. Noel, for the same reason set forth in the first assignment of error, and for the further reason:

a. That said testimony was not connected by competent evidence.

b. That no conspiracy was proven by competent evidence.

c. That the connection of the defendant, C. W. Lung, with said alleged conspiracy was not proven by competent evidence.

III.

The court erred in refusing to grant defendant's motion to instruct the jury to acquit the defendant, C. W. Lung.

a. No competent evidence having been introduced to prove the connection of defendant, C. W. Lung, to the alleged conspiracy.

b. No competent evidence having been introduced to prove the alleged conspiracy.

c. No concert of action having been shown between the several defendants charged and C. W. Lung.

d. Insufficient evidence to sustain the verdict.

These assignments of error apply to the testimony of witnesses Martin Mendoza and Wm. Noel.

Defendant then sets forth ten assignments of error covering the admission of the testimony of the following named witnesses [Tr. page 60]: James F. Meyers, Horace Walling, Chas. Escallier, Frank Burgess, G. Bernard, Emile Christopher, Gus Jones, Mary Elida Hamlin, Mrs. Mary Gillman, Mr. Muller and Casius L. Keep, and one example will cover these ten assignments, as follows:

“The court erred in admitting the testimony of the witness Jas. F. Meyers, over the objection of the defendant, C. W. Lung.

a. No competent evidence having been introduced to show the connection of defendant, C. W. Lung, with the alleged conspiracy.

b. Not a part of any overt act.

c. Irrelevant, incompetent and immaterial.”

Defendant then sets up ten assignments of error for the same witnesses upon the court's refusal to grant defendant's motion to strike out their testimony, and one example will cover all of these ten assignments of error, as follows:

“The court erred in not granting defendant's motion to strike out the testimony of witness Jas. F. Meyers.

a. No competent evidence having been introduced to prove the connection of said C. W. Lung with the alleged conspiracy.

b. Not a part of any overt act.

c. Incompetent, irrelevant and immaterial.

d. No connection shown by the defendant C. W. Lung and witnesses Martin Mendoza and Wm. Noel, who are also charged as defendants.”

Before proceeding to a citation of points and authorities we desire to call the court's attention particularly to the fact that the transcript contains ALL of the proof made and evidence adduced on the part of the government. [Tr. page 137.]

A careful reading of the evidence of all of the witnesses produced on the part of the government will show that there is not a single witness, with the exception of Martin Mendoza and Wm. Noel, who in any way connected the defendant C. W. Lung with these two men.

It will also be noted in the Tr., page 41, that the witness Martin Mendoza plead "guilty" to this same indictment, as did also witness Wm. Noel, therefore they are the alleged co-conspirators with plaintiff in error, C. W. Lung.

The testimony of all of the other witnesses for the United States does not, with the possible exception of the testimony of Mrs. Mary Gillman, whose testimony appears in full [Tr. pages 131 to 137, inc.], in any manner connect the defendant C. W. Lung with the witnesses Martin Mendoza and Wm. Noel, but simply corroborates Noel and Mendoza in their statements of *their* overt act.

The testimony of Mrs. Gillman is simply to the effect that at one time she saw an automobile with two men in it, whom she could not identify, at Lung's home, and in her testimony she absolutely fails to corroborate either Noel or Mendoza in any particular whatever. In fact, where they testify that they took a number of

Chinese to Lung's house in an automobile, she says but one man got out of the machine, and that he immediately got back in the machine and drove away in it. She could have seen and would have seen any others get out of the machine, if they had been there.

The testimony of James F. Meyers is absolutely immaterial in this action and is no part of any overt act, and further, is a narrative of past events. The same may be said of the testimony of Horace Walling, Chas. Escallier and Fred Burgess.

The testimony of witness Gus P. Jones is to the effect that he arrested, in company with others, the two conspirators Noel and Mendoza, but he does not in any manner connect the plaintiff in error with either or both of them.

It is therefore our contention that the testimony of all of these witnesses is incompetent, irrelevant and immaterial, as it fails to connect plaintiff in error with the co-conspirators, Noel and Mendoza. As was said in the case of the United States v. Richards, 149 Fed. Rep. 443, page 452, "To establish the connection of any one of the defendants with the conspiracy, such connection must be shown by facts and circumstances, or by his own acts, conduct or declarations, independent of the declarations of others, and until this fact is established he is not bound by the declarations and statements of others." The principle of law and the rule of evidence is that when once a conspiracy or combination is established and the defendant's connection therewith is established by independent evidence, then he is bound by the acts and statements of his co-conspirators.

And again, the rule is, as set forth in the Sixth American & English Encyclopedia of Law, page 868, "And until the conspiracy is shown, *aliunde*, the acts and declarations of the alleged conspirator are inadmissible to establish the connection with the conspiracy of one charged as a co-conspirator." As was well said by Dyer, J., in *United States v. Goldberg*, 7 Bliss (U. S.) 175, "If a conspiracy be shown to exist, the next question is whether or not the defendants on trial, or either of them, were connected with that conspiracy as parties thereto. To establish this connection it must be shown by facts or circumstances independent of the declarations of others, or by his own acts, conduct or declarations, and until this fact is thus established he is not bound by the declarations or statements of others. The principle of law and rule of evidence is, that when once the conspiracy is established, *and the defendant's connection therewith is shown by independent evidence* (italics ours), then he is bound by the acts and declarations and statements of his co-conspirators, because in that case each is deemed to assent to or commend what is done in furtherance of the one object."

Sec. 1111 of the Penal Code of California provides: "A conviction cannot be had on the testimony of an accomplice unless he is corroborated by other evidence which in itself, and without the aid of the testimony of an accomplice, tends to connect the defendant with the commission of the offense, and the corroboration is insufficient if it merely shows the commission of the offense or the circumstances thereof." This is the law in the state of California and has been since the Crim-

inal Practice Act of 1851. Kerr's Penal Code of California, Sec. 1111.

This court in passing upon this matter in the case of the United States v. Wong Din, 135 Fed. Rep. 702, in which case the plaintiff in error, Wong Din, relied upon the case of the United States v. Logan, 45 Fed. 873, to support the contention that we make in this case, viz., that a conviction for conspiracy cannot be had on the uncorroborated testimony of the co-conspirators, nor can conspirators corroborate each other. The case relied upon as above, United States v. Logan, was afterwards taken to the United States Supreme Court, where it was reversed, Judge Gray writing the opinion of the court, 144 United States 263, 36 L. E. 429.

In the case at bar it will be seen by a careful reading of the testimony introduced on behalf of the government that there was absolutely no evidence whatever connecting the plaintiff in error, C. W. Lung, with the conspiracy, or the commission of any overt act except the uncorroborated testimony of the acknowledged conspirators Mendoza and Noel. All of the other testimony which the government depends upon as corroborative of their testimony is simply a narrative of past events, and the Supreme Court has said in this connection: "Tested by this rule, it is quite clear that the defendant on trial could not be affected by the admissions made by others of the alleged conspirators, after the conspiracy had ended, by the attack on the prisoners, the killing of two of them, and the dispersing of the mob. There is no evidence in the record tending

to show that the conspiracy continued after that time. Even if, as suggested by the counsel for the United States, the conspiracy included an attempt to manufacture evidence to shield Logan, Johnson's subsequent declarations that Logan acted with the mob at the fight at Dry Creek, were not in execution or furtherance of the conspiracy, but were mere narratives of past fact, and statements to the same effect made by Charles Marlow to his companions while returning to the Denson farm, after the fight was over, were incompetent in any view of the case."

"There being other evidence tending to prove the conspiracy and any acts of Logan in furtherance of the conspiracy being therefore admissible against all of the conspirators as their acts. The admission of incompetent evidence of such acts of Logan prejudiced all of the defendants and entitled them to a new trial."

It is so in the case at bar. The admission of testimony of Meyers, Walling, Escallier, Burgess, Bernard, Jones, Gillman, was all in the nature of past events, was incompetent, as it did not either tend to connect the plaintiff in error with the conspiracy or with any overt act and its admission before the jury and the court's refusal after its admission to strike it from the record, and instruct the jury to disregard the same, was absolutely prejudicial to the plaintiff in error, C. W. Lung, in that the jury were allowed to consider this testimony, and in view of the caution given by the court as to the testimony of an accomplice, to consider this immaterial testimony, this narrative of past events, was corroborative of the testimony of the two acknowledged conspirators, Noel and Mendoza, and in view of the strong

language of Mr. Justice Gray in the case of *Logan v. The United States*, *supra*, it is our contention that the error of the trial court in admitting this evidence was so prejudicial that the judgment should be reversed and the cause remanded with instructions in accordance with the opinion.

The authority for the admission of the testimony of an accomplice and co-conspirator dates back to the sixteenth century. Along toward the end of the seventeenth century the courts began to act upon the modern conception as to admitting a witness and yet discriminating as to the qualitative sufficiency of his testimony became more apparent, but not until the end of that century, the seventeenth, did the courts begin acting upon such a suggestion in their instructions to the jury, and about that time came a general practice to discourage a conviction founded solely upon the testimony of an accomplice, uncorroborated. It was recognized that the judge's instructions upon this point were a mere exercise of his common law function of advising the jury upon the weight of evidence, and was not a statement of a rule of law binding upon the jury. As a matter of common law the doctrine was universally understood as amounting to no rule of evidence, but merely a counsel of caution given by the judge to the jury, but in half of the jurisdictions in this country this cautionary practice has been turned into a rule of law. The judge must therefore, under these statutes, instruct the jury in the rule of law, and the jury must follow. This rule of law has been in force in the state courts of our own jurisdiction since the Criminal Practice Act of 1851, Sec. 1111, of the Penal Code of California, and

is in our opinion one of the wisest and safest precautions adopted by our law-makers to protect the rights of our people, and in our judgment no case that ever came before the court could more clearly justify the reason for this statute than the case at bar. Here is a man standing facing a term in the penitentiary, a citizen of the United States (for this Chinaman is native born, and has been so adjudged), who, if he is compelled upon the testimony of self-confessed violators of our laws, to serve a term in the penitentiary, will be deprived of that thing which is more dear to the American citizen than any other one thing within the gift of this great republic, his right as a citizen, the right of franchise.

Without this wise provision in the statutes, any two or more self-confessed criminals can enter into a conspiracy to convict not only the lowly, but the highest and most honorable citizen of the United States of a crime charged under Sec. 37 of the Penal Code of the United States, and where the court permits evidence to be introduced, as in this case, which merely corroborates the conspirators as to their own acts, and as to that only, as a narrative of past events, it is clear that the remarks here made are capable of being *consummated* upon any of our witnesses. For instance, suppose, for the sake of argument, that these two men, self-confessed criminals, Noel and Mendoza, had desired to charge the witness Walling with being a member of the conspiracy, and in their testimony had connected him as they did the plaintiff in error, and the evidence had been admitted with the so-called corroboration that was admitted in this case, there is no ques-

tion but what the same jury would have returned the same verdict against Walling as they did against the plaintiff in error. It may be contended on behalf of the government that Lung, when he took the witness stand in his own behalf, could not explain what he did with the \$350, or whether he even took \$350, on November 27th, 1911, and that this is sufficient corroboration of the testimony of Noel and Mendoza to uphold the verdict of the jury in this case. Our reply to that is that all defendants are presumed to be innocent until proven guilty beyond all reasonable doubt and to a moral certainty. That at the close of the prosecution's case, if there is no evidence sufficient to compel a defendant to introduce evidence in his own behalf, no case having been made out against him by competent evidence, that he is entitled to an instruction by the court to the jury that no competent case had been made out against him, and therefore they should acquit him. [Tr. pages 44 to 93, inc.]

In the case of *Wong Din v. The United States*, 135 U. S. 702, decided by this court Feb. 20, 1905, case No. 1097, Judge Hawley, in writing of the opinion of the court says: "The testimony of Thomas Burnett, if competent, and believed by the jury to be true, was sufficient to justify the verdict of 'guilty' found by the jury," and in that connection he quotes from the opinion of Judge Nixon, in the case of *The United States v. Sacia*, 2 Fed. 754, 758, as follows:

"The fact that a witness is a co-conspirator doubtless operates, and ought to operate, largely against the credibility of his testimony, but the jury is not bound to

reject it on that account. Whilst it would be unsafe in ordinary cases to convict anyone on the uncorroborated testimony of accomplices in the crime, the rule of law is that they are competent witnesses, and it is your duty to consider their evidence. You are to weigh it and scrutinize it with great care. You are to test its truth by inquiring into the probable motive which prompted it. You are to look into the testimony of other witnesses for corroborating facts. Where it is supported in material respects you are bound to credit it, but where it is unsupported you are not to rely upon it unless, after the exercise of extreme caution, it produces in your minds the most positive conviction of truth."

In the case of Wong Din if the court will take the trouble to look up the record they will find that there was evidence in abundance by disinterested witnesses connecting the defendant Wong Din with the defendant, Thomas T. Burnett, and therefore in that case the charge of Judge Nixon above quoted, the verdict of "guilty" as to Wong Din, upon the testimony of said Thomas Burnett, was amply sufficient, but in the case at bar there is absolutely no evidence for the jury to have looked into. As said by Judge Nixon, "You are to look into the testimony of other witnesses for a corroboration of the facts," and where the testimony of the conspirators Noel and Mendoza was unsupported, the jury must have been satisfied as to the most positive conviction of the truth of their story. Can it be said in all reason that had the court excluded the evidence of witnesses other than Noel and Mendoza, that the

jury, knowing, as they did, the history and record of these two conspirators, could have had the positive conviction of the truth of their story? We contend not. Was there any competent evidence that they could have looked into for corroboration of the testimony of these two, under the decision of the United States Supreme Court, in the case of *The United States v. Logan?* (*supra*). We say no. Therefore we contend that the evidence in the case at bar is wholly insufficient to sustain the verdict of “guilty.”

It was held in the case of *Logan* against the United States (*supra*):

“That the laws of the state in which the court is held shall be the rules of decision as to the competency of witnesses in the courts of the United States in trials at common law, and in equity and admiralty has no application to criminal trials.”

If the Supreme Court had not so held, there is absolutely no question but what the plaintiff in error, in the case at bar, would have been discharged.

Penal Code of California, Sec. 1111;

People v. English, 52 California, 212;

61 California, 137;

77 California, 506;

People v. Loven, 119 California, 91.

In other words, if Sec. 858 Revised Statutes had been construed by the Supreme Court of the United States to apply to criminal trials, Sec. 1111 of the Penal Code of California would have applied to the case at bar, and there being no evidence other than the evidence of the

confessed co-conspirators to connect the plaintiff in error, C. W. Lung, with the alleged conspiracy, there could have been no conviction. Unfortunately, however, the Supreme Court, as above quoted, has decided that Sec. 858, R. S., does not apply to criminal trials. Therefore the statutes of the state of California do not apply to the case at bar. Nevertheless, we still contend that the law-makers of this state, one of whom was the Hon. Stephen Field, associate justice of the Supreme Court of the United States, were more than wise in their day and generation when they incorporated in the organic law of the state of California, in the Criminal Practice Act of 1851, the provision that a defendant could not be convicted on the uncorroborated testimony of an accomplice or a co-conspirator, and their successors were equally wise when the same law was re-enacted and continued in Sec. 1111, Penal Code, of the State of California, and we contend that the rule of evidence in this circuit should be in accordance with the section above quoted, and in all cases where the defendant is not connected with the conspiracy, by evidence *aliunde*, the testimony of the co-conspirators should be thrown out and that no conviction should be had upon the uncorroborated testimony of a co-conspirator or an accomplice, and that the corroboration should be such that it must tend to connect the defendant with the commission of the offense, and is not sufficient if it merely shows the commission of the offense, or the circumstances thereof.

Bradford, district judge, in charging the jury in the case of *The United States v. Giuliani*, 147 Fed. 594, says at page 598:

“I may further add that if the testimony of Rosa Caliendo and Pasquale Frallicciardi stands wholly uncorroborated, directly or circumstantially, this court would deem it its duty to advise the jury not to convict the defendant upon their uncorroborated testimony * * * but unquestionably there is evidence in this case tending to corroborate the truthfulness of their testimony before you, and the weight of that corroborative evidence is for you, as reasonable men, and not for the court to determine.”

It is so in the case at bar. If there was any testimony to corroborate the testimony of the conspirators Mendoza and Noel, then it was a matter for the jury to determine, whether their testimony was true or false. If true, and it was not excluded by reason of another rule of evidence, then the defendant, plaintiff in error here, might have been found “guilty,” and the verdict permitted to stand. If untrue, to the extent of a positive conviction, then the defendant, plaintiff in error here, is entitled to a verdict of acquittal.

The testimony of the alleged conspirators Noel and Mendoza was inadmissible for the reason that it was a narrative of past events.

It will be noted from a careful reading of the transcript in this case that the testimony of the conspirators, Noel and Mendoza, was simply nothing more or less than a narrative of past events which had transpired

long before it was given and after the conspiracy had been ended.

Their testimony, therefore, was clearly inadmissible, as has been said by the Supreme Court of the United States:

“If a conspiracy has come to an end, either by success or by failure, the admissions of one conspirator by way of narrative of past facts are not admissible in evidence against the others.”

Brown v. United States, 150 U. S. 93 (37 L. E. 1011);

Logan v. United States, 144 U. S. 310 (36 L. E. 430);

Brown v. United States, 159 U. S. 100 (40 L. E. 90);

Brown v. United States, 164 U. S. 221 (41 L. E. 410).

It is therefore our contention that in the case at bar the verdict of the jury should be set aside and the defendant, plaintiff in error here, given a new trial.

I.

The court erred in admitting evidence of the alleged co-conspirators over the objection of the attorneys for the defendant, also the conspiracy not having been proven by competent evidence.

a. No competent evidence other than the evidence of said alleged co-conspirator having been offered to prove the connection of the defendant, plaintiff in error here, C. W. Lung, with the said alleged conspiracy.

b. No concert of action having been shown between the several defendants charged and said C. W. Lung.

c. Being a narrative of past events after the commission of the alleged conspiracy, made by an alleged co-conspirator.

II.

The court erred in denying the motion of defendant, plaintiff in error here, C. W. Lung, to strike out all of the testimony of said witness, Martin Mendoza, for the same reason set forth in the first assignment of error herein, and for the further reason:

a. That said testimony was not connected by competent evidence.

b. That no conspiracy was proven by competent evidence.

c. That the connection of the defendant, plaintiff in error here, C. W. Lung, with said alleged conspiracy was not proven by competent evidence.

III.

The court erred in refusing to grant defendant's motion for an instruction to the jury to acquit the defendant.

a. No competent evidence having been introduced to prove the alleged conspiracy.

b. No competent evidence having been introduced to prove the connection of the defendant, plaintiff in error here, C. W. Lung, with the alleged conspiracy.

c. No concert of action having been shown between the several defendants charged and C. W. Lung.

d. Insufficient evidence to sustain a verdict.

IV.

The court erred in admitting the evidence of the alleged co-conspirator, William Noel, over the objection of the attorneys for the defendant, for the same reasons and in the same particulars that it erred in admitting the evidence of the witness Martin Mendoza.

V.

The court erred in denying the motion of defendant to strike out all of the testimony of said witness, Wm. Noel, for the same reasons and in the same particulars that it refused to strike out all of the testimony of the witness Martin Mendoza.

VI.

The court erred in admitting the testimony of the witnesses James F. Meyers, Horace A. Walling, Charles S. Escallier, Fred H. Burgess, G. Bernard, Emile Christopher, Gus P. Jones, Mary Elida Hamlin, Mrs. Mary Gillman, Mr. Miller and Casius L. Keep, for the following reasons:

- a. No competent evidence having been introduced to show the connection of defendant Lung to the alleged conspiracy.
- b. Not a part of any overt act.
- c. Irrelevant, incompetent and immaterial.

VII.

The court erred in not granting defendant's motion to strike out the testimony of witnesses Fred H. Burgess, G. Bernard, Emile Christopher, Gus P. Jones,

Mary Elida Hamlin, Mrs. Mary Gillman, Mr. Miller and Casius L. Keep, for the following reasons:

a. No competent testimony having been introduced to prove the connection of said C. W. Lung to the alleged conspiracy.

b. Not a part of any overt act.

c. Irrelevant, incompetent and immaterial.

d. No connection shown between defendant C. W. Lung and witnesses Martin Mendoza and William Noel, who are also charged as defendants.

For the foregoing reasons we respectfully submit that the verdict of the jury in the case at bar should be set aside, and the case reversed, with instructions in accordance with the decision of this court.

Respectfully submitted,

McKEEBY & REDD,

Attorneys for Plaintiff in Error.

United States
Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

C. W. Lung,

Plaintiff in Error,

vs.

United States of America,

Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT.

Plaintiff in error, C. W. Lung, appeals from a conviction for violation of Section 37, Penal Code of 1910, that is, a conspiracy to smuggle Chinese laborers into the United States. The Government's testimony consists in that of two co-conspirators or accomplices, viz., Mendoza and Noel, corroborated, as we contend, in many important particulars by the witnesses, viz., Myers [Tr. p. 124]; Walling [Tr. p. 125]; Escallier [Tr. p. 126]; Burgess [Tr. p. 127]; Barnard [Tr. p. 128]; Jones [Tr. p. 129]; and Gillman [Tr. p. 130]; and, as we contend, by the testimony of Lung himself [Tr. p. 137].

Mendoza and Noel describe three journeys to the Mexican boundary, bringing by the first journey two Chinese, who were delivered in Los Angeles to defendant Lung, who paid Mendoza \$300.00 for his services, \$10.00 of which was paid on delivery and \$290.00 later in the day, the agreed price which Lung was to pay Mendoza and Noel being \$150.00 for each Chinaman; bringing the second journey three Chinamen from the Mexican boundary, who were also delivered to the defendant Lung at Los Angeles, for which Mendoza or Noel or one of them was paid \$450.00 by defendant Lung; and a third attempt to bring to the defendant Lung one Chinaman and some opium.

The co-conspirators, Mendoza and Noel, very clearly testified to the foregoing facts among many other details, each telling the same story. Their testimony is corroborated in nearly every important particular, which is hereinafter pointed out.

The questions presented by this appeal of defendant, Lung, are principally embodied in the contention of Lung's counsel, to-wit, that the testimony of Mendoza and Noel was not corroborated and that a conviction cannot be sustained in the Federal court on the testimony of accomplices unless the same is corroborated.

There are two or three other minor contentions which will be hereinafter referred to, viz., the action of the court in permitting the statements of said accomplices before a conspiracy had been established, which we contend went to the order of the proof and not to its competency, and, next, to the action of the court in permitting what appears to be certain statements made by third parties to the co-conspirators, Mendoza and

Noel, while they were participating in the conspiracy, to which Lung is shown to be a party.

The contention of the Government is that in the Federal courts a conviction may be sustained upon the uncorroborated testimony of an accomplice or accomplices; and second, that in the case at bar the testimony of the two co-conspirators, Mendoza and Noel, was sufficiently corroborated, and in the next place that no error was committed by the court in exercising his discretion as to the order of proof and in the admission of evidence on the trial of this case.

Therefore, we submit this case on the following propositions:

Points, Authorities and Argument of Defendant in Error.

PROPOSITION NO. I.

The order of proof in a conspiracy case is in the discretion of the court.

Of this proposition we think there can be no doubt, for in Vol. 8 *Cyc.*, p. 682, in discussing this question, it is said:

“According to the great weight of authority the order in which the testimony shall be received is largely in the discretion of the trial court. If the circumstances of the case are so peculiar and urgent as to require it, the acts and declarations of a conspirator may be introduced in the first instance before proof of the crime.”

Drake v. Stewart, 76 Fed. Rep. 140.

PROPOSITION No. 2.

The court committed no error in allowing evidence of the acts and declarations of persons not parties to the record, for the reason that the same were admissible against the defendant where it appeared that they were made in carrying the conspiracy into effect or attempting to carry it into effect.

Clune v. U. S., 159 U. S. 590.

The case of *Clune v. U. S.*, *supra*, sufficiently answers the contention of counsel as made on pages 9 and 10 of his brief, wherein he contends that the testimony of certain witnesses was incompetent.

PROPOSITION No. 3.

A conviction may be sustained in the Federal courts on the uncorroborated testimony of an accomplice or accomplices.

Little need be said in reply to the argument of counsel for plaintiff in error set out on pages 10 *et seq.* of their brief, for the reason that Section 1111 of the Penal Code of California is cited and discussed and which is not applicable to this case. It is thoroughly settled that the provision of Section 858 of the Revised Statutes of the United States, that the laws of the state in which the court is held shall be the rules of decision as to the competency of witnesses in the court of the United States in trials at common law and in equity and admiralty, has no application to criminal trials in the Federal courts.

In *Logan v. The United States*, 144 U. S. 300, 36 Law. Ed., p. 442, the history of Section 858 of the Re-

vised Statutes is discussed and it is clearly held that rules of evidence in criminal trials in the Federal courts are not covered by the statutes of the several states.

As far as we are able to find, it has always been the rule in the Federal courts for the court to charge the jury that they should receive the testimony of an accomplice with great caution and should not act upon it unless after the exercise of extreme caution it produces in their minds the most positive conviction of its truth.

This rule, of course, originated in the seventeenth century, and, as stated by Mr. Wigmore in Vol. 3, Sec. 2056 *et seq.*, of his work on Evidence, grew out of, or originated in the right of the courts administering the common law to charge upon the evidence.

As stated in the foregoing section:

“As a matter of common law, then, the doctrine was universally understood (except by one or two courts) as amounting to no rule of evidence, but merely to a counsel of caution given by the judge to the jury. It followed that the jury might or might not regard the caution by acquitting upon an uncorroborated accomplice’s testimony; that they alone were to determine whether corroboration existed and was sufficient; and that the trial judge’s omission of the caution was of itself not a ground for a new trial, being a matter solely for the trial judge’s discretion.”

In about half of our states or jurisdictions it appears that a statute has expressly changed this cautionary practice into a rule of law, but we have been unable to find any decision of the Federal courts which requires the testimony of an accomplice or accomplices to be corroborated in order to sustain a conviction. Below are found a number of cases sustaining this position.

FEDERAL CASES.

- U. S. v. Babcock, 3 Dill. 571;
U. S. v. Troax, 3 McLean 224;
U. S. v. Kessler, Baldw. 15-22;
Steinham v. U. S., 2 Paine 168-180; 22 Fed.
Cases No. 13355;
U. S. v. McKee, 26 Fed. Cases No. 15,685;
Same Case, 26 Fed. Cases No. 15,686;
U. S. v. Sacia, 2 Fed. Rep. 754;
U. S. v. Fleming, 18 Fed. Rep. 907;
U. S. v. Lancaster *et al.*, 44 Fed. Rep. 896;
U. S. v. Sykes, 58 Fed. Rep. 1004;
Crawford v. U. S., 212 U. S. 203-4-5;
U. S. v. Giuliani, 147 Fed. Rep. 598;
Richardson v. U. S., 181 Fed. Rep. 9;
Holmgren v. U. S., 217 U. S. 509; 54 L. Ed.
867-8.

STATE CASES.

- Flanagen v. State, 25 Ark. 92;
Solander v. People, 2 Colo. 48;
Wisdom v. People (Colo.), 17 Pac. 519;
State v. Wolcott, 21 Conn. 272;
Gray v. People, 26 Ill. 344;
Cross v. People, 47 Ill. 152 (In this case it was
said: "It is a matter of discretion with the
court to advise rather than a rule of law");
Craft v. State, 3 Kan. 450;
State v. Patterson, 52 Kan. 335;
State v. Prudhomme, 25 La. 522 (In this case
it is said: "It is rather a practice than a rule
of law");

- State v. Russell, 33 La. 135 (In this case it is said: "The authorities justify conviction by the jury on such testimony although it may not be corroborated by other");
- State v. Vickman, 52 La. 1921; 28 So. 273 (This case approves the foregoing Louisiana cases and holds that in a requested charge that the accomplice's testimony should not be even considered unless corroborated, was held properly refused);
- State v. Cunningham, 31 Me. 355;
- State v. Litchfield, 58 Me. 267;
- Com. v. Bosworth, 22 Pick. 397;
- Com. v. Larrabee, 99 Mass. 413;
- Com. v. Elliott, 110 Mass. 104;
- Com. v. Scott, 123 Mass. 222;
- Com. v. Wilson, 152 Mass. 12; 25 N. E. 16;
- Hamilton v. People, 29 Mich. 173;
- Keithler v. State, 10 Sm. & M. 192 (In this case it was held that the jury may believe the accomplice if they choose, without corroboration);
- Dick v. State, 30 Miss. 593;
- State v. Watson, 31 Mo. 361 (The opinion in this case is denominated by Mr. Wigmore in his work on Evidence as a good opinion);
- State v. Walker, 98 Mo. 95; 11 S. W. 1133;
- State v. Harkins, 100 Mo. 666; 13 S. W. 830;
- State v. Marcks, 140 Mo. 656; 41 S. W. 973;
- State v. Tobie, 141 Mo. 547; 42 S. W. 1078;
- Lamb v. State, 40 Neb. 312; 58 N. W. 963;
- State v. Hyer, 39 N. J. L. 598;

- State v. Rachman, 68 N. J. 120; 53 Atl. 1046;
Lindsay v. People, 63 N. Y. 145 (At this point
the law of New York was changed by a statute of 1882);
State v. Holland, 83 N. C. 624;
Allen v. State, 10 Oh. St. 287;
Kelrow v. Com., 125 Pa. 94;
State v. Green, 48 S. C. 136; 26 S. E. 234;
State v. Potter, 42 Vt. 495-506 (In this case it
is stated that it is only a rule of practice, and
not a rule of law);
Edwards v. State, 2 Wash. 291; 26 Pac. 258;
State v. Betslall, 11 W. Va. 703;
State v. Hill, 48 W. Va. 132; 35 S. E. 831;
Mercer v. Wright, 3 Wis. 645 (In this case it
is held that a jury ought not to convict on
the testimony of an accomplice unless corroborated, but all now agree that they may do so);
Porath v. State, 90 Wis. 527; 63 N. W. 1061.

In the case of *U. S. v. Sacia, supra*, the rule seems to be thoroughly recognized that a conviction could be sustained on the uncorroborated testimony of an accomplice, and there the charge of the court was in part as follows:

“Where there is support in material respects you are bound to credit it, but where it is unsupported you are not to rely upon it unless after the exercise of extreme caution it produces in your mind the most positive conviction of its truth.”

In the case of *Steinham v. U. S., supra*, it was held that an accomplice being a competent witness it was

not erroneous for a court to direct a jury to find a verdict upon his uncorroborated evidence if they believed him. There is a very lengthy note following this decision set out in 22 Fed. Cases, pages 1236-7-8, thoroughly discussing the history of the rule.

In the case of *U. S. v. McKee*, 26 Fed. Cases No. 15,685, and also 26 Fed. Cases No. 15,686, Justice Dillon very thoroughly discusses the weight due in the law to the testimony of confessed conspirators and accomplices and the rules of law laid down in respect to the power of juries to convict on such testimony when not corroborated. In this opinion it is said, at 26 Fed. Cases, p. 1111:

“The testimony of conspirators is always to be received with extreme caution and weighed and scrutinized with great care by the jury, who should not convict upon it unsupported unless it produces in their minds the surest and most positive conviction of its truth. It is just and proper in such cases for the jury to seek for corroborating facts in material respects. It is just and proper to do it. It is not absolutely necessary.”

In the case of *U. S. v. Giuliani, supra*, at page 598, it is said:

“While the testimony of an accomplice should always be received with caution, and weighed and scrutinized with great care by the jury, the accomplice is nevertheless a competent witness, and the degree of credit which should be given to the testimony of an accomplice is a matter exclusively within the province of the jury. While the jury, as a matter of law, may convict a person accused of a grave crime upon the uncorroborated testimony of an accomplice, it is, however, usual for the court to advise the jury against the conviction un-

less the testimony of the accomplice has been corroborated by competent evidence in some material part.”

In the case of *Richardson v. U. S.*, *supra*, at page 9, it is said:

“There is nothing which forbids the conviction of defendant, at common law, or in a Federal court, on the uncorroborated testimony of an accomplice. No doubt there is a well established practice, sanctioned by long practice and judicial approbation, to caution jurors about accepting the evidence of an accomplice without material corroboration, coming, as it does, from a polluted source, but this is as far as the matter goes, and corroboration not being indispensable, an instruction that the jury ought to acquit where there is none, encroaches on the prerogatives of the jury, who have a right to rely on such evidence if they are satisfied with it, and the court may therefore without error refuse to charge that they ought not.”

It will be seen that the court in those instances only gave the instruction as a caution to the jury and allowed them to find a verdict of guilty provided the testimony of the accomplice produced in their minds the most positive conviction of its truth.

In the case of *U. S. v. Lancaster et al.*, *supra*, it was held that an accomplice, notwithstanding the turpitude of his conduct, is not on that account an incompetent witness, but the jury may, if they please, act on the evidence of an accomplice.

In the case of *Crawford v. U. S.*, 212 U. S. 204, Justice Peckham, in referring to the testimony of an accomplice, states that the evidence of such a witness

ought to be received with suspicion and with the very greatest care and caution and ought not to be passed upon by the jury under the same rules governing other and apparently credible witnesses. This opinion seems to recognize that a conviction may be sustained on the evidence of an accomplice, uncorroborated, but that the jury should be warned that the testimony of an accomplice or accomplices should be received with great caution.

It appears in the case at bar counsel objected to the testimony of the accomplices on the ground that they had either plead guilty or been convicted of the same offense as the defendant Lung [Tr. p. 42; also Tr. p. 93]; counsel's position was at the time that the witnesses Mendoza and Noel were incompetent witnesses, but it is a well settled rule of law that a co-conspirator, though an accomplice and though uncorroborated, is always a competent witness. The fact that he is an accomplice operates not against the admissibility of his testimony, but only against its credibility.

Vol. 8 Cyc., p. 684.

In Section 2056 of Vol. 3 of Wigmore on Evidence, at page 2747, it is said:

“At common law the judge was entitled and bound to assist the jury before their retirement with an expression of his opinion (in no way binding them to follow it) upon the weight of the evidence. This utterance was made the medium of many useful general suggestions based on experience. The benefit of this experience was thus obtained for them, without any attempt to fetter their judgment by inflexible dogmas unfitted for invariable application as rules of law. One of these

general hints was that about accomplices' testimony. But in this country the orthodox function of the judge to assist the jury on matters of fact was in a misguided moment (except in a few jurisdictions) eradicated from our system. The judge was forbidden to contribute to the jury's aid any expression of opinion on the weight of evidence in a given case. Unless there was a rule of the law of evidence on the subject of an accomplice's testimony, he could not in a given case advise them to refuse to convict upon the uncorroborated testimony of an accomplice. The makers of this innovation upon established trial methods were thus obliged to turn into a rule of law the old practice as to accomplices, if they wished to retain its benefit at all."

So it will be seen that it is only in the state courts where the state has passed a statute requiring the testimony of an accomplice to be corroborated that it is necessary for an accomplice's testimony to be corroborated to sustain a conviction.

PROPOSITION No. 4.

The evidence of the accomplices or co-conspirators Mendoza and Noel was amply corroborated in this case.

The testimony of Myers [Tr. pp. 124, 125] was that he was in the automobile business in Los Angeles, and that he remembered seeing Noel and Mendoza on December 8, 1911, where they came to his garage to secure some gasoline and oil, which the witness sold them; but there was a third man in the car at the time, and that the car was all covered with dirt and grease, and that both Mendoza and Noel appeared to be covered with dust, and that one of them had a piece cut out of his shoe and that he supposed this one was lame. It

will be noted that this corroborates the testimony of Mendoza and Noel as to that trip to the border and the delivery of the Chinese to defendant Lung.

Also, the testimony of Walling [Tr. pp. 125, 126], which shows that he was engaged in the automobile business and that he was acquainted with Mendoza and Noel, and that Noel hired an automobile from him and made a trip and paid the rent, amounting to \$50.00 or \$75.00; that he made two trips with the automobile; that the witness had a conversation with Noel about buying a car and that Mendoza was present and that they arranged to buy a car for \$1500.00 and later bought one and paid down the sum of \$300.00, and that on the night of December 7th or 8th, the witness received a telephone message from Temecula stating that Mendoza and Noel had broken a wheel and that the witness carried a new wheel to Mendoza and Noel at Temecula.

This corroborates the testimony of Mendoza and Noel as to having broken a wheel on one of the trips after Chinamen and of applying to this witness and getting a new wheel for the car.

Also the testimony of witness Escallier [Tr. pp. 126, 127]. This witness testifies to having seen Mendoza and Noel near Temecula in December, 1911, when they were in an automobile about two miles from Temecula; that he saw people with Mendoza and Noel and two of them were dressed as women, which corroborates the statement of the accomplices to the effect that the Chinese were dressed as women when they were brought up to Los Angeles.

Also, the testimony of Burgess [Tr. pp. 127, 128]. This witness testifies that Mendoza and Noel purchased the two revolvers (exhibits offered in evidence) at Hoegee's store.

Also, the testimony of Barnard [Tr. p. 128]. This witness arrested C. W. Lung in San Diego on the morning of December 11, 1911, and the witness identified two railroad tickets purchased from the Santa Fe Railway from Los Angeles to San Diego and return, these tickets being purchased on December 5th, 1911, the date that the accomplices said the defendant Lung went to San Diego.

Also, the testimony of Jones [Tr. pp. 129, 130]. This witness testified that when he arrested Mendoza and Noel at the Point San Juan on the coast road between Los Angeles and San Diego, they were going in the direction of Los Angeles, and that Noel made the statement that the car belonged to Mr. Walling in San Diego, and that in the machine the officers found one Chinaman and twelve cans of opium. It will be noted this was the third trip, by which Mendoza and Noel testified they were to bring one Chinaman for the defendant Lung.

Also, the testimony of Mrs. Gillman [Tr. pp. 131, 132, 133, 134, 135, 136, 137]. By the testimony of this witness it was shown that she saw an automobile come to Mr. Lung's place in the fall of 1911 before Thanksgiving, and that there were two men in the automobile and that they were both pretty stout, heavy-set men, both of them, and that they went to the defendant Lung's house or place and that the automobile stopped at Lung's place and that one of the men got out of the

automobile and that the other one stayed in the automobile on the seat.

Now it will be noted that each of these witnesses testified to separate important details and facts as to the movements of Mendoza and Noel in bringing the Chinese from Mexico into the United States to the place or house of C. W. Lung in Los Angeles. The witness Mrs. Gillman corroborates the statement of Mendoza and Noel as to their going to Lung's place at the time specified.

It will also be noted [Tr. p. 137] that the defendant C. W. Lung testified that his cash book showed that on November 27, 1911, he drew \$350.00, and that he did not know what he did with the money. This evidently shows that this was the money paid to Mendoza and Noel, or one of them, and the defendant Lung's failure to remember what he did with \$350.00 of his money which his books show he drew on that date is a very incriminating fact in view of the testimony of Mendoza and Noel as to the receipt of \$300.00 from defendant Lung.

We contend that even under the state statute cited by counsel in his brief, the corroboration is amply sufficient to sustain the conviction. That is, if corroboration were required, it is certainly sufficient in this case, for where corroboration is relied on in a case in the Federal court the confirmatory evidence need not extend to the whole testimony; but it being shown that

the accomplice has testified truly in some particulars, the jury may infer that he has in others.

U. S. v. Lancaster *et al.*, 44 Fed. Rep. 896;

U. S. v. Ybanney, 53 Fed. Rep. 540;

Keliher v. U. S., 193 Fed. R. 8;

U. S. v. Giuliani, 147 Fed. Rep. 598.

Hence, we submit that the appeal in this case is without any merit, and that the judgment of the trial court should be affirmed.

Respectfully submitted,

ALBERT SCHOONOVER,

United States Attorney;

DUKE STONE,

Assistant United States Attorney.

29
3